



LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: August 19, 2009

Time: Closed Session 6:00 p.m.
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

- a) Exposure to Litigation: Government Code §54956.9(b); One case; Exposure to Litigation from California's Investor Owned Utilities (SCE, PG&E, and SDG&E) against City of Lodi Based on the Market Disruptions Associated with the Electric Utility Deregulation Crisis of 2000-2001
- b) Prospective Lease of a Portion of 218 West Pine Street and 211 Oak Street, Lodi; the Negotiating Parties are the City of Lodi, Odd Fellows Hall Association of Lodi, and Beckman Capitol Corporation for Placement of Environmental Cleanup Equipment; Price and Terms are under Negotiation; Government Code §54956.8

C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll call

B. Invocation – Pastor Mark Price, St. Paul Lutheran Church

C. Pledge of Allegiance

D. Presentations

- D-1 Awards – None
- D-2 Proclamations – None
- D-3 Presentations – None

E. Consent Calendar (Reading; Comments by the Public; Council Action)

E-1 Receive Register of Claims in the Amount of \$1,834,797.83 (FIN)

E-2 Approve Minutes (CLK)

- a) August 4, 2009 (Shirtsleeve Session)
- b) August 5, 2009 (Regular Meeting)
- c) August 11, 2009 (Shirtsleeve Session)
- d) August 11, 2009 (Special Meeting)

E-3 Accept Memorial Bench and Plaque Donation from Lisa and Pett Saiprasert in Honor of Chad Ehrhart (PR)

Res. E-4 Adopt Resolution Awarding Contract for Tree Trimming (Power Line Clearing) to Asplundh Tree Expert Company, of Stockton, CA (\$326,700) (EUD)

- Res. E-5 Adopt Resolution Authorizing the City Manager to Sign the Agreement for Hazardous Materials Team within San Joaquin County (FD)
- E-6 Approve Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi and Authorize the City Manager to Execute the Agreement on Behalf of the City of Lodi (CM)
- Res. E-7 Adopt Resolution Authorizing the City of Lodi's Participation in an Interlocal Agreement Regarding the 2009 Edward Byrne Memorial Justice Assistance Grant and Authorizing the City Manager to Execute the Agreement on Behalf of the City of Lodi (PD)
- Res. E-8 Adopt Resolution Authorizing Administrative Settlement with California Regional Water Quality Control Board for Discharge Violations (PW)
- E-9 Set Public Hearing for October 7, 2009, to Consider Resolution Approving New Rates for Solid Waste Collection (PW)

F. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

G. Comments by the City Council Members on Non-Agenda Items

H. Comments by the City Manager on Non-Agenda Items

I. Public Hearings – None

J. Communications

- J-1 Claims Filed Against the City of Lodi – None
- J-2 Appointments
- a) Appointment to Library Board of Trustees and Re-Post for Vacancies on Lodi Budget/Finance Committee and Lodi Animal Advisory Commission (CLK)
- J-3 Miscellaneous – None

K. Regular Calendar

- Res. K-1 Consider Impact of State Adopted Budget and Amend Budget via Resolution as Needed in Response to Proposition 1A Property Tax "Borrowing" (CM)
- Res. K-2 Approve Downtown Lodi Business Partnership 2009-10 Annual Report, Adopt Resolution of Intention to Levy Annual Assessment, and Set Public Hearing for September 2, 2009, to Consider the Proposed Assessment (CM)
- K-3 Receive Report and Endorse a Proposed "Downtown Summit" (CM)
- K-4 Receive Report on the Status of the General Plan Update (CD)
- K-5 Approve Issuance of Request for Proposals for Turnkey Solar Demonstration Project at White Slough Water Pollution Control Facility (EUD)
- K-6 Receive Report and Consider Options for Cable Television Broadcasts of City Council Meetings (CM)

L. Ordinances – None

M. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

Randi Johl
City Clerk



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Register of Claims Dated July 23 and July 30, 2009 in the Total Amount of \$1,834,797.83

MEETING DATE: August 19, 2009

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$1,834,797.83.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$1,834,797.83 dated 07/23/09 and 07/30/09. Also attached is Payroll in the amount of \$1,298,140.16.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Blair King, City Manager

Accounts Payable
Council Report

Page 1
Date - 08/03/09
Amount

As of Thursday	Fund	Name	Amount
07/23/09	00100	General Fund	690,436.90
	00123	Info Systems Replacement Fund	985.00
	00160	Electric Utility Fund	34,828.74
	00164	Public Benefits Fund	23,000.72
	00170	Waste Water Utility Fund	42,982.16
	00172	Waste Water Capital Reserve	6,916.19
	00180	Water Utility Fund	1,813.70
	00181	Water Utility-Capital Outlay	4.78
	00210	Library Fund	6,260.23
	00211	Library Capital Account	194.10
	00230	Asset Seizure Fund	5,000.00
	00260	Internal Service/Equip Maint	7,485.77
	00270	Employee Benefits	25,221.21
	00321	Gas Tax	32,838.66
	00325	Measure K Funds	10,758.05
	00332	IMF(Regional) Streets	1,208.23
	00340	Comm Dev Special Rev Fund	2,368.95
	00345	Community Center	2,123.81
	00346	Recreation Fund	7,226.10
	01212	Parks & Rec Capital	8,877.73
	01218	IMF General Facilities-Adm	45,792.97
	01250	Dial-a-Ride/Transportation	11,220.02
	01410	Expendable Trust	22,443.64
Sum			989,987.66
	00184	Water PCE-TCE-Settlements	42.00
Sum			42.00
Total for Week			
Sum			990,029.66

Accounts Payable
Council Report

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Date - 08/03/09
Amount

As of Thursday	Fund	Name	Amount
07/30/09	00100	General Fund	352,841.14
	00160	Electric Utility Fund	23,390.62
	00161	Utility Outlay Reserve Fund	626.84
	00164	Public Benefits Fund	1,624.91
	00170	Waste Water Utility Fund	10,395.02
	00172	Waste Water Capital Reserve	355.26
	00180	Water Utility Fund	302,060.95
	00210	Library Fund	283.49
	00260	Internal Service/Equip Maint	15,285.25
	00270	Employee Benefits	27,475.75
	00310	Worker's Comp Insurance	27,113.49
	00321	Gas Tax	1,869.70
	00325	Measure K Funds	234.99
	00340	Comm Dev Special Rev Fund	6,025.81
	00345	Community Center	2.64
	00346	Recreation Fund	6,211.26
	00502	L&L Dist Z1-Almond Estates	858.00
	00503	L&L Dist Z2-Century Meadows I	546.00
	00506	L&L Dist Z5-Legacy I,II,Kirst	1,412.66
	00507	L&L Dist Z6-The Villas	1,187.34
	00509	L&L Dist Z8-Vintage Oaks	459.34
	01218	IMF General Facilities-Adm	2,880.00
	01250	Dial-a-Ride/Transportation	4,548.87
	01410	Expendable Trust	20,919.31
Sum			808,608.64
	00184	Water PCE-TCE-Settlements	6,890.00
	00190	Central Plume	29,269.53
Sum			36,159.53
Total for Week			
Sum			844,768.17

Council Report for Payroll

Page - 1
Date 08/03/09

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	07/12/09	00100	General Fund	771,891.29
		00160	Electric Utility Fund	156,620.26
		00164	Public Benefits Fund	5,354.43
		00170	Waste Water Utility Fund	92,753.32
		00180	Water Utility Fund	1,711.36
		00210	Library Fund	28,517.26
		00235	LPD-Public Safety Prog AB 1913	2,108.85
		00260	Internal Service/Equip Maint	21,661.11
		00321	Gas Tax	50,283.99
		00340	Comm Dev Special Rev Fund	27,796.81
		00345	Community Center	27,434.82
		00346	Recreation Fund	60,295.90
		01250	Dial-a-Ride/Transportation	6,740.10
Pay Period Total:				
Sum				1,253,169.50
Retiree	08/31/09	00100	General Fund	44,970.66
Pay Period Total:				
Sum				44,970.66



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Minutes
a) August 4, 2009 (Shirtsleeve Session)
b) August 5, 2009 (Regular Meeting)
c) August 11, 2009 (Shirtsleeve Session)
d) August 11, 2009 (Special Meeting)

MEETING DATE: August 19, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) August 4, 2009 (Shirtsleeve Session)
b) August 5, 2009 (Regular Meeting)
c) August 11, 2009 (Shirtsleeve Session)
d) August 11, 2009 (Special Meeting)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through D.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

Attachments

APPROVED: _____
Blair King, City Manager

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, AUGUST 4, 2009**

The August 4, 2009, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, AUGUST 5, 2009**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of August 5, 2009, was called to order by Mayor Hansen at 5:15 p.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

- a) Threatened Litigation: Government Code §54956.9(b); One Case; Potential Suit by Roy Beams against City of Lodi Based on Personal Injury
- b) Actual Litigation: Government Code §54956.9(a); One Case; Nava v. City of Lodi, et al., San Joaquin County Superior Court, Case No. 39-2009-00211306-CU-PO-STK
- c) Actual Litigation: Government Code §54956.9; One Application; Curtis Gokey v. City of Lodi, WCAB Case Number STK 0207649 (12/31/05)
- d) Pursuant to Government Code §54956.9(c); Conference with Legal Counsel; Anticipated Litigation/Initiation of Litigation Regarding Potential Filing of Writ of Mandate against State Water Quality Control Board Challenging Wastewater Permit Order; One Potential Case

C-3 Adjourn to Closed Session

At 5:15 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 6:05 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:02 p.m., Mayor Hansen reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), negotiating direction was given.

Item C-2 (b) was not discussed.

In regard to Items C-2 (c) and C-2 (d), direction was given.

A. Call to Order / Roll call

The Regular City Council meeting of August 5, 2009, was called to order by Mayor Hansen at 7:02 p.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Invocation - Reverend Alan Kimber, First United Methodist Church

C. Pledge of Allegiance

D. Presentations

D-1 Awards - None

D-2 Proclamations - None

D-3 Presentations

a) Presentation of Certificate of Recognition to the Lodi-Tokay Rotary Club for Sponsoring the Lodi International Wine Awards

Mayor Hansen presented a Certificate of Recognition to Mike Bennett, representing the Lodi-Tokay Rotary Club, in recognition of it sponsoring the Lodi International Wine Awards.

b) Quarterly Update by the Greater Lodi Area Youth Commission (COM)

Josh Gums and Beau Benko, members of the Greater Lodi Area Youth Commission, gave an update on the Commission's activities and accomplishments.

E. Consent Calendar (Reading; Comments by the Public; Council Action)

Council Member Mounce made a motion, second by Council Member Johnson, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

E-1 Receive Register of Claims in the Amount of \$12,439,795.87 (FIN)

Claims were approved in the amount of \$12,439,795.87.

E-2 Approve Minutes (CLK)

The minutes of July 14, 2009 (Shirtsleeve Session), July 15, 2009 (Regular Meeting), July 21, 2009 (Shirtsleeve Session), and July 28, 2009 (Shirtsleeve Session) were approved as written.

E-3 Approve Specifications and Authorize Advertisement for Bids for Traffic Stripes for Various City Streets 2009 (PW)

Approved the specifications and authorized advertisement for bids for Traffic Stripes for Various City Streets 2009.

E-4 Accept Quarterly Investment Report as Required by Government Code Section 53646

(CM)

Accepted the quarterly report of the City of Lodi pooled money investments as required by Government Code Section 53646 and the City of Lodi Investment Policy.

E-5 Receive Quarterly Report of Purchases between \$5,000 and \$20,000 (CM)

Received the quarterly report of purchases between \$5,000 and \$20,000.

E-6 Ratify Aggregate Ultraviolet Lamp Purchases in Excess of City Manager Signature Authority (CM)

Ratified aggregate ultraviolet lamp purchases in excess of City Manager signature authority.

E-7 Adopt Resolution Authorizing the Purchase of Ultraviolet Light Disinfection Lamps for White Slough Water Pollution Control Facility from Coombs-Hopkins/DC Frost, of Walnut Creek (\$175,000) (PW)

Adopted Resolution No. 2009-101 authorizing the purchase of ultraviolet light disinfection lamps for White Slough Water Pollution Control Facility from Coombs-Hopkins/DC Frost, of Walnut Creek, in the amount of \$175,000.

E-8 Adopt Resolution Authorizing Purchase of Sodium Hydroxide for White Slough Water Pollution Control Facility from Sierra Chemical Company, of Sparks, Nevada (\$68,250) (PW)

Adopted Resolution No. 2009-102 authorizing the purchase of sodium hydroxide for White Slough Water Pollution Control Facility from Sierra Chemical Company, of Sparks, Nevada, in the amount of \$68,250.

E-9 Adopt Resolution Appropriating Funds and Concur with Emergency Repair of Irrigation Pump Motor Control Center Electrical Wiring at White Slough Water Pollution Control Facility (\$54,762) (PW)

Adopted Resolution No. 2009-103 appropriating \$54,762.41 and concurring with emergency repair of the irrigation pump motor control center electrical wiring at White Slough Water Pollution Control Facility; declaring a local emergency; and dispensing with the City's bidding requirements in accordance with Lodi Municipal Code Section 3.20.070.

E-10 Adopt Resolution Awarding Contract for Building Demolition at 17 East Elm Street Project to Double B Demolition, of Folsom (\$39,913) (PW)

Adopted Resolution No. 2009-104 awarding the contract for Building Demolition at 17 East Elm Street Project to Double B Demolition, of Folsom, in the amount of \$39,913.

E-11 Approve Entry Agreement for White Slough Water Pollution Control Facility to Allow Department of Water Resources to Conduct Non-Invasive Tests and Authorize the City Manager to Execute the Agreement on Behalf of the City of Lodi (CA)

Approved entry agreement for White Slough Water Pollution Control Facility to allow the Department of Water Resources to conduct non-invasive tests and authorized the City Manager to execute the agreement on behalf of the City of Lodi.

E-12 Adopt Resolution Approving Lease Extension to Lodi Adopt-A-Child for 100 East Pine

Street and Authorizing the City Manager to Execute the Agreement on Behalf of the City of Lodi (CA)

Adopted Resolution No. 2009-105 approving lease extension to Lodi Adopt-A-Child for 100 East Pine Street and authorizing the City Manager to execute the agreement on behalf of the City of Lodi.

E-13 Adopt Resolution Approving City of Lodi's Sewer System Management Plan (PW)

This item was pulled for further discussion by Council Member Hitchcock.

In response to Council Member Hitchcock, Water Services Manager Charlie Swimley stated the City is on a time line to adopt the plan, the plan is a living document and the result of a State Order, the order requires cities to have a plan to manage their sewer systems, there are approximately 11 components to the plan, and the plan will continue to evolve and be updated. Council Member Hitchcock requested a copy of the plan be provided to the City Council. The item was continued to a future meeting as a result.

Council Member Hitchcock made a motion, second by Council Member Mounce, to continue the matter to a future meeting pending receipt and review of the Sewer System Management Plan by the City Council.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

E-14 Adopt Resolution to Grant Another Designated Period for Two Years Additional Service Credit to the Street Maintenance Worker III Classification (CM)

Adopted Resolution No. 2009-106 to grant another designated period for two years additional service credit to the Street Maintenance Worker III classification.

E-15 Approve Response to 2008-09 San Joaquin County Grand Jury Report Regarding Information Technology Security (CM)

This item was pulled for further discussion by Council Member Mounce.

In response to Council Member Mounce, Mr. King stated the only parallel issue to the audit dealt with the security of servers and their placement underground and the annual Comprehensive Annual Financial Report response was similar to that of the Grand Jury response.

Council Member Mounce made a motion, second by Council Member Johnson, to approve the response to the 2008-09 San Joaquin County Grand Jury Report regarding information technology security.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

E-16 Adopt Resolution Establishing Guidelines for a First-Time Home Buyer Program and Authorizing an Application to the State Department of Housing and Community Development for \$800,000 of HOME Funding (CD)

This item was pulled for further discussion by Council Member Hitchcock.

In response to Council Member Hitchcock, Mr. King stated a small portion of the City, if any, may still be in the flood zone. Neighborhood Services Manager Joseph Wood stated staff will verify the flood information as necessary prior to submitting the application.

Council Member Hitchcock made a motion, second by Mayor Hansen, to adopt Resolution No. 2009-107 establishing guidelines for a first-time home buyer program and authorizing an application to the State Department of Housing and Community Development for \$800,000 of HOME funding.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

F. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Alan Kimber spoke in regard to invocations at City Council meetings, stating there are other views than the two represented at the prayer rally as it is possible to have prayer at City Council meetings that is consistent with the existing City policy.

David Diskin spoke in regard to invocations at City Council meetings, stating there is another view and he and his groups are in support of both the City and the City Council.

Bryan Davies spoke in regard to invocations at City Council meetings, stating he is in favor of invocations invoking Jesus Christ. He also suggested the Auburn Dam is an opportunity to create lower electricity rates for citizens.

Luna McDonald spoke in regard to invocations at City Council meetings, stating she is in favor of invocations invoking God.

Robin Rushing spoke in regard to invocations at City Council meetings, stating he is in favor of separation of church and state and supports diversity.

Cliff Donaldson spoke in regard to invocations at City Council meetings, stating he is a local pastor and appreciates the opportunity to pray freely in the manner to which he is accustomed as it is not meant to be offensive.

Randy Thomason spoke in regard to invocations at City Council meetings, stating he is in favor of religious freedom. He also provided an overview of case relevant to the subject matter and urged the Council to permit uncensored prayer.

Chaplain Klingenschmitt spoke in regard to invocations at City Council meetings, stating he is in favor of praying in the name of Jesus Christ and provided an overview of how other communities that he is familiar with have dealt with the same issue.

G. Comments by the City Council Members on Non-Agenda Items

Council Member Mounce provided a report on her attendance at the League of California Cities summit, stating there was discussion regarding a constitutional convention and the State will borrow Proposition 1A funds from local governments.

Council Member Hitchcock reported that the Lodi Unified School District began its school year and will continue to provide children with quality education despite challenges.

Mayor Hansen reported on an upcoming meeting with Congressman McNerney to address the river and erosion issues. He stated some funding was provided for County improvement projects and flood control. Mayor Hansen congratulated the neighborhoods participating in National Night Out on their success and also reported the new Lodi Energy Center continues to move forward.

H. Comments by the City Manager on Non-Agenda Items

City Manager King stated that, with respect to the League summit, there was some general understanding that there needs to be some mechanism to provide local governments and school districts more control. Mr. King stated the revised State budget includes a \$2 billion borrowing from cities and counties, the City impact for the property tax reduction is approximately \$1.2 million, staff will be coming back to Council to adjust and amend the budget accordingly, and the Legislature promised to securitize the funding which is difficult in light of the State's ratings. Mr. King also reported that the Public Works and Community Development counters will be closing during the lunch hour from 12:00 to 1:00 p.m. due to staff reductions beginning September 2, 2009.

In response to Council Member Johnson, Mr. King stated the assumption is that the State will not cover the cost of issuance if the cities are forced to refinance or borrow funds.

In response to Council Member Johnson, Mr. King stated he is confident that the gas tax will be taken in the next round of the State budget, at a cost of \$1 million to the City, because it was previously on the table.

In response to Council Member Johnson, Council Member Mounce confirmed that the League of California Cities is proceeding in taking legal action against the State as previously discussed.

In response to Mayor Hansen, Mr. King stated property taxes are paid twice a year and the City receives its proportionate share when payment occurs, the County pursues delinquent payments, and staff will continue to keep a more conservative approach with property tax accounting.

I. Public Hearings

I-1 Take Actions Pertaining to Affordable Senior Housing Project at 2245 Tienda Drive (CD)

a) Adopt Resolution Authorizing the City Manager to Execute an Exclusive Right to Negotiate

with Eden Development, Inc. Regarding Senior Housing Project at 2245 Tienda Drive

- b) Conduct Public Hearing to Consider the Adoption of a Resolution Authorizing the Reallocation of Available Community Development Block Grant and HOME Program Funding to Eden Development, Inc. for an Affordable Senior Housing Project

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider adoption of a resolution authorizing the reallocation of available Community Development Block Grant (CDBG) and HOME Program funding to Eden Development, Inc. for an Affordable Senior Housing Project.

City Manager King briefly introduced the subject matter of the development of the proposed senior affordable housing project by Eden Housing.

Neighborhood Services Manager Joseph Wood provided a presentation regarding the affordable senior housing project. Specific topics of discussion included authorization for an exclusive right to negotiation agreement, conducting a public hearing to reallocate CDBG and HOME funds, location of the project at 2245 Tienda Drive, former action regarding the proposed project, 24-month term of the proposed agreement, reallocation of CDBG and HOME funds with \$1.1 million dedicated to affordable housing project and staff recommendation regarding the same.

In response to Council Member Hitchcock, Mr. King stated that the general relationship the Council has previously discussed is providing federal funding assistance and land acquisition for fair market value. He stated the fiscal impact is the allocation of previously earmarked funds and land acquisition for fair market value and a purchase agreement will be brought back to Council in the future.

In response to Council Member Hitchcock, Mr. King stated project approval would occur when the terms of the loan and development disposition agreement are complete. He stated project approval and financial commitment is simultaneous.

Mayor Hansen opened the public hearing for public comment.

Ann Cerney requested clarification of the funding allocation. Mr. King provided a brief history of the proposed project, previous allocation of funds to an affordable housing project, Council approval for directing funding toward an affordable senior housing project, and the sale of proceeds for land being directed to the Roget Park development.

Mayor Hansen closed the public hearing after receiving no further public comment.

In response to Council Member Hitchcock, Mr. Schwabauer stated the law that governs use of park impact funds and grant money states that if property is sold, it must be put back into the park. Mr. King stated Roget Park is listed under the impact fee program. Council Member Hitchcock requested information regarding funding detail for the park and project.

In response to Mayor Hansen, Mr. Wood stated the funds must be expended by June 2010 and the County and City are comfortable with the expenditure time line for the proposed project.

Interim Community Development Director Rad Bartlam provided a brief overview of the size and scope of the proposed project specifically discussing the 80 unit, two-story project and public meetings with neighboring residents and property owners.

Mayor Hansen made a motion, second by Council Member Mounce, to adopt Resolution

No. 2009-108 authorizing the City Manager to execute an Exclusive Right to Negotiate Agreement with Eden Development, Inc. regarding affordable senior housing project at 2245 Tienda Drive and to adopt Resolution No. 2009-109 authorizing the reallocation of available CDBG and HOME Program funding to Eden Development, Inc. for the affordable senior housing project.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

J. Communications

J-1 Claims Filed Against the City of Lodi - None

J-2 Appointments - None

J-3 Miscellaneous - None

K. Regular Calendar

K-1 Authorize the City Manager to Enter into a Professional Services Agreement with People Assisting Lodi Shelter (PALS) to Perform the Shelter's Administrative Functions as Directed in the 2009-10 Budget (CA)

City Manager King provided a brief overview of the proposed professional services agreement with People Assisting Lodi Shelter (PALS). Specific topics of discussion included the functions of office management at the shelter, proposed terms of agreement, and the revenue neutral result of agreement.

Lieutenant Steve Carrillo also discussed duties of PALS including processing and maintaining records, processing payment, generating data, adoptions, telephone answering training, staffing on weekdays and weekends, issuing licenses and collecting related fees, animal behavioral assessment tests, records for spay and neuter vouchers, budget account maintenance for animal shelter related accounts, ongoing duties of animal services officers, cleaning and upkeep of shelter, and ongoing effort to work together in implementing agreement.

In response to Council Member Johnson, Mr. Schwabauer stated the insurance requirements for a Fidelity bond are included because \$50,000 of the City funds is involved and there will be some handling of money.

In response to Mayor Hansen, Mr. King confirmed that if PALS brought in \$60,000 the additional revenue could be turned around and used for the services provided.

Council Member Mounce made a motion, second by Mayor Hansen, to authorize the City Manager to enter into a Professional Services Agreement with People Assisting Lodi Shelter (PALS) to perform the Shelter's administrative functions as directed in the 2009-10 budget.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

K-2 Authorization to Solicit Bids for Artificial Turf Design Services (PR)

City Manager King briefly introduced the subject matter of the application of synthetic turf.

Interim Parks and Recreation Director Jim Rodems provided a PowerPoint presentation regarding the application of synthetic turf. Specific topics of discussion included the project overview, alleged health issues, hazardous chemicals, heat, bacteria, injuries, why synthetic turf, year-round usage, maintenance costs, replacement, and conclusions regarding the same.

In response to Council Member Mounce, Mr. Rodems confirmed there is approximately 115,000 square feet in covered turf for the Grape Bowl, the annual maintenance costs are approximately \$60,000, the current facility does not meet industry standards for maintenance, and there is an assumption that the water usage numbers are arrived at based on water meters.

In response to Mayor Hansen, Mr. Rodems stated softball play has not occurred at the facility for approximately four to five years.

In response to Council Member Hitchcock, Mr. Rodems stated a spreadsheet for annual cost savings was not prepared because there is so much disparity in what the savings would be in comparison to the existing costs. Mr. Rodems stated the annual savings could be approximately 85% to 90% and additional detail on coverage will be provided when the facility is engineered.

Discussion ensued amongst Council Member Hitchcock and Mr. Rodems regarding a variety of specific issues associated with the proposed installation of the synthetic turf including the availability of the product, the make-up of the product, various studies on synthetic turf, California rules and requirements for synthetic turf versus other states, the challenges associated with the product over the last 20-year period, recent advancement of materials and safety improvements in the industry, and maximizing field usage at the Grape Bowl during different seasons throughout the year. Mr. King also reviewed the conclusions of the synthetic turf field report completed for the City and County of San Francisco.

In response to Council Member Hitchcock, Mr. King stated he is not sure of why specifically the turf fields are not allowed in landfills other than the Environmental Protection Agency has concluded there are heat risks.

In response to Council Member Mounce, Mr. Rodems confirmed there are approximately 13 to 14 fields in the City including the smaller fields, generally there are no events scheduled in the Grape Bowl during June, July, and August, and an increase in requests for usage is expected if the turf field is installed.

In response to Council Member Mounce, Mr. Rodems stated the current numbers reflect 100% replacement of the field in 15 to 20 years and it is conceivable that only a portion of the field may be replaced at a lesser cost.

Discussion ensued between Council Member Mounce and Mr. Rodems regarding the arguments presented in the referenced studies, the lack of a cost analysis for the fields and maintenance of the same, risks associated with the product including heat concerns, the California study due in September 2010, and usage of the field during summer months.

Robin Rushing spoke in opposition to the proposed solicitation of bids for artificial turf design

services, stating the City should wait until the California study is completed. Ann Cerney requested additional information regarding possible bidders and contents of the request for proposals. Mr. Rodems stated the bids are solicited from engineering firms and there are three major companies in the industry that produce the field with the preferred materials.

In response to Mayor Hansen, Mr. King stated the current action is for soliciting engineering and design services, to be followed by a selection and qualification process, after which design specs will be generated and the bid process will be undertaken.

In response to Council Member Mounce, Mr. Rodems stated the proposed field is different from that used at the Manteca Field of Dreams because it is a heavier mix of sand.

A brief discussion ensued between Council Member Mounce and Council Member Johnson regarding the need for a business plan for the Grape Bowl facility.

In response to Mayor Hansen, Mr. Rodems stated the specific determinations as to what portion of the facility will be covered have not been made because those determinations will be made as a part of the engineering process.

Council Member Johnson made a motion, second by Mayor Pro Tempore Katzakian, to authorize solicitation of bids for artificial turf design services.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Mayor Pro Tempore Katzakian, and Mayor Hansen

Noes: Council Member Hitchcock, and Council Member Mounce

Absent: None

K-3 Adopt Resolution Nominating Representative from the City of Stockton to the Special City Selection Committee for Appointment to the San Joaquin Valley Air Pollution Control District Governing Board (CLK)

Council Member Mounce made a motion, second by Mayor Hansen, to adopt Resolution No. 2009-110 nominating Mayor Ann Johnston from the city of Stockton to the Special City Selection Committee for appointment to the San Joaquin Valley Air Pollution Control District Governing Board.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: Mayor Pro Tempore Katzakian

Absent: None

K-4 Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$3,500) (CA)

Mayor Hansen made a motion, second by Council Member Mounce, to approve legal expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation in the amount of \$3,500, as further detailed in the staff report.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and

Mayor Hansen
Noes: Council Member Hitchcock
Absent: None

L. Ordinances - None

M. Adjournment

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, AUGUST 11, 2009**

The August 11, 2009, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, AUGUST 11, 2009**

A. Roll call

The Special City Council meeting of August 11, 2009, was called to order by Mayor Hansen at 7:00 a.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Absent: None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Closed Session

At 7:00 a.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the following matters.

B-1 Pursuant to Government Code §54956.9(c); Conference with Legal Counsel; Anticipated Litigation/Initiation of Litigation Regarding Potential Filing of Writ of Mandate against State Water Quality Control Board Challenging Wastewater Permit Order; One Potential Case

B-2 Prospective Lease of City Property (10± Acres Adjacent to White Slough Water Pollution Control Facility, Located at 12745 N. Thornton Road, Lodi, CA); the Negotiating Parties are Don Dame on behalf of the Northern California Power Agency and City Manager Blair King for the City of Lodi; Price and Terms of the Lease are under Negotiation; Government Code §54956.8

C. Return to Open Session / Disclosure of Action

At 7:30 a.m., Mayor Hansen reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items B-1 and B-2 were discussion only with no reportable action.

D. Regular Calendar

D-1 Authorize City Manager to Enter Voluntary Cleanup Agreement with Department of Toxic Substances Control for Soil Removal on Lodi Energy Center Site (CA)

City Attorney Schwabauer provided a brief review of the terms of the proposed agreement. Mr. Schwabauer specifically discussed clean-up of contamination on the Lodi Energy Center site, area of clean-up to span approximately 4.4 acres, contamination resulting from the operation of the wastewater treatment plant, voluntary clean-up agreement, the Department of Toxic Substances Control anticipation of fees for approximately \$45,000, City exposure for trucking and disposal related fees at approximately \$1.6 million for worst case scenario and \$450,000 for more likely scenario, and fee offset against revenues from the Lodi Energy Center.

In response to Mayor Hansen, Water Services Manager Charlie Swimley stated the clean-up will likely take place concurrently with the construction. Mr. Swimley confirmed some excavation would occur on the site regardless of the clean-up.

Mayor Hansen made a motion, second by Council Member Johnson, to authorize the City Manager to enter voluntary cleanup agreement with the Department of Toxic Substances Control for soil removal on the Lodi Energy Center site.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

D-2 Adopt Resolution Authorizing the City Manager to Submit a Joint Application with Eden Development, Inc., to the State of California Department of Housing and Community Development for HOME Investment Partnerships Program Funding; and if Selected, the Execution of a Standard Agreement, and Amendments Thereto, and of any Related Documents Necessary to Participate in the HOME Investment Partnerships Program (CD)

City Manager King provided a brief overview of the subject matter of submitting a joint application with Eden Development in relation to the proposed senior affordable housing unit project. Specific topics of discussion included Eden Development identifying HOME funds and encouragement to apply for the same, Eden Development being ineligible for State HOME funds on its own based on process, the City and Eden being eligible for the funding as co-applicants, Eden's responsibility to perform all tasks, no additional fiscal liability or responsibility for the City in being a co-applicant, and application of standard conditions including the annual audit and best practices.

Neighborhood Services Manager Joseph Wood provided a brief PowerPoint presentation and discussed the availability of State funding for the Tienda Drive project, process and certification associated with Community Housing Development Organization (CHDO), history of funding with CHDO, application deadline of August 17, and the proposed resolution authorizing the City as a co-applicant for State HOME program funding.

In response to Mayor Hansen, Katie Lamont, representative of Eden Development, stated they would like to get both types of funds for the proposed project and the joint application meets Department of Housing and Urban Development standards. Ms. Lamont stated for State HOME program funding, eligible applicants include cities, counties, and CHDOs. She stated the State requirements for CHDOs are different and more stringent, which is the reason for co-applicant need.

In response to Council Member Hitchcock, Mr. King stated he is not aware of any additional financial risk or liability for the City associated with being a co-applicant for the funding.

In response to Council Member Hitchcock, Interim Community Development Director Rad Bartlam stated there is no additional burden on staff for administering the funding as staff oversight for the project will occur regardless.

In response to Myrna Wetzel, Mr. Bartlam stated staff will provide pre-construction and post-construction oversight, in addition to ongoing oversight through annual reviews similar to the hotel projects.

Mayor Hansen made a motion, second by Council Member Mounce, to adopt Resolution No. 2009-111 authorizing the City Manager to submit a joint application with Eden Development, Inc., to the State of California Department of Housing and Community Development for HOME Investment Partnerships Program funding; and if selected, the execution of a standard

agreement, and amendments thereto, and of any related documents necessary to participate in the HOME Investment Partnerships Program.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katzakian, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: None

E. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:47 a.m.

ATTEST:

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Accept Memorial Bench and Plaque Donation from Lisa and Pett Saiprasert In Honor of Mr. Chad Ehrhart

MEETING DATE: August 19, 2009

PREPARED BY: Steve Dutra, Park Superintendent

RECOMMENDED ACTION: Accept a memorial bench and plaque project from Lisa and Pett Saiprasert in honor of Mr. Chad Ehrhart

BACKGROUND INFORMATION: On May 11, 2009, staff received a written request (attached) from Mrs. Lisa Saiprasert requesting a memorial tree and plaque be placed in the Ron Williamson Youth Area at Lodi Lake Park in honor of her son Chad Ehrhart. Staff met with Mrs. Saiprasert to discuss project location, project costs and policy protocol. On August 4, 2009, the Recreation Commission voted unanimously to support this request.

FISCAL IMPACT: Mr. and Mrs. Saiprasert agree to provide all necessary funding for this request.

FUNDING AVAILABLE: N/A

James M. Rodems
Interim Parks and Recreation Director

JMR\SD:tl

Attachment

cc: City Attorney

APPROVED: _____
Blair King, City Manager

Lodi Parks & Recreation Dept.

Attn: Steve Dutra

May 11, 2009

Dear Steve,

On August 24, 2008, our son (Chad Ehrhart) was struck and killed instantly by a train while attempting to cross the tracks downtown near Locust Street.

He was 20-years-old.

We may never fully know what happened that night, but I can tell you, our beautiful son will be missed by many people who were privileged to know and love him.

Mostly by his two sisters, the youngest being only eight, who thought the world of their brother.

Chad loved Lodi Lake.

It was a significant part of his life and a place he would seek often just to sit and think. He felt a deep connection there and hope to

be granted permission to memorialize his name on a bench or by planting a tree as we try to honor his everlasting love for this park in death as he did in life.

There is no greater loss or devastation as when you lose a child so suddenly, so brutally, so tragically. The healing is slow and painful. I write to you on behalf of his two sisters, his dad, his fiancé who he will never marry, his many friends, but also, for myself. I want this, need this, just as much as everyone else. To have a place to sit, to feel connected, would mean so much to so many.

Your consideration is greatly appreciated.

Sincerely,

Lisa Sapp

Lisa E Pett Sappasert

209-712-4312

510 Ribier Ave

Lodi, CA 93240



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Awarding Contract for Tree Trimming (Power Line Clearing) to Asplundh Tree Expert Company of Stockton, CA (\$326,700) (EUD)

MEETING DATE: August 19, 2009

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution awarding the contract for Tree Trimming (Power Line Clearing) to Asplundh Tree Expert Company of Stockton, CA in the estimated amount of \$326,700.

BACKGROUND INFORMATION: This contract provides for tree-trimming services necessary for the reliable operation of the Lodi Electric Utility power lines for the remainder of Fiscal Year 2009/10. The budget for the full year is \$375,000. The present power line trimming contractor is Trees, Inc.

Specifications for this service were approved for issuance by the Council on May 20, 2009. The City received bids for this service on June 11, 2009 – all bids exceeded the FY 2009/10 budget for power line clearance. On July 15, 2009 the Council rejected all bids and authorized re-advertisement.

On August 4, 2009, four bids were received for a 3-person Backyard Crew and a 2-person Street Crew:

Asplundh Tree Expert Company, Stockton, CA	\$189.94 per hour
Trees, Inc., Houston, TX	\$192.12 per hour
West Coast Arborists, Inc., Anaheim, CA	\$245.00 per hour
Davey Tree Surgery Company, Livermore, CA	\$307.40 per hour

Asplundh Tree Expert is the lowest responsive bid. Asplundh is an experienced tree-trimming contractor with a national presence. It currently provides service to other electric utilities in the region.

Based on approximately 43 weeks (1,720 work hours) remaining in the year, the cost through June 2010 of the lowest bid is an estimated \$326,700. This amount will be reduced by holidays and other days not worked.

Service for July and August 2009 was provided by Trees, Inc. under the prior tree-trimming contract. The term of the new contract will be from September 1, 2009 through June 30, 2010 with three one-year extension options.

FISCAL IMPACT: Trimming trees reduces electric outages for customers and reduces emergency call-outs and repair work.

APPROVED: _____
Blair King, City Manager

FUNDING AVAILABLE: The projected cost of \$375,000 is included in the budget for Fiscal Year 2009/10 under Account No. 160654 – Tree Trimming. Funding for contract extensions shall be approved on a year-to-year basis.

Jordan Ayers
Deputy City Manager/Internal Services Director

George F. Morrow
Electric Utility Director

PREPARED BY: Ken Weisel, Assistant Electric Utility Director

GFM/KW/lst

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING THE CONTRACT
FOR TREE TRIMMING (POWER LINE CLEARING) AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY OF LODI;
AND FURTHER AUTHORIZING THE CITY MANAGER TO APPROVE THREE ONE-
YEAR EXTENSIONS OF THE CONTRACT WITH CONTINUED SATISFACTORY
PERFORMANCE IN THE PRIOR YEAR

WHEREAS, tree trimming services are necessary for the reliable operation of the Lodi Electric Utility power lines; and

WHEREAS, the City Council approved specifications for Tree Trimming (Power Line Clearing) services for the fiscal year ending June 30, 2009, and up to three subsequent years; and

WHEREAS, in answer to notice duly published in accordance with law and the order of the City Council, the City received and publicly opened on August 4, 2009, sealed bids for Tree Trimming (Power Line Clearing), described in the specifications approved by the City Council; and

WHEREAS, bids were received, as follows:

Bidder	Bid
Asplundh Tree Expert Company, Stockton, CA	\$189.94/hr
Trees, Inc., Houston, TX	\$192.12/hr
West Coast Arborists, Inc., Anaheim, CA	\$245.00/hr
Davey Tree Surgery Company, Livermore, CA	\$307.40/hr

WHEREAS, staff recommends awarding the tree trimming contract to the lowest responsive bidder, Asplundh Tree Expert Company, of Stockton, CA.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the bid for Tree Trimming (Power Line Clearing) to Asplundh Tree Expert Company of Stockton, CA, at quoted rates, up to \$326,700, for the remainder of the fiscal year ending June 30, 2010; and

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to execute the contract with Asplundh Tree Expert Company of Stockton, CA, for tree trimming for power line clearance on behalf of the City of Lodi; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to extend the contract with Asplundh Tree Expert Company of Stockton, CA, for Tree Trimming (Power Line Clearing) services for up to three one-year extensions, with continued satisfactory performance in the prior year, in accordance with the terms of the specification approved by the City Council, and subject to limitations established in the operating budget.

Dated: August 19, 2009

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 19, 2009, by the following vote:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Sign the Agreement for Hazardous Materials Team Within San Joaquin County

MEETING DATE: August 19, 2009

PREPARED BY: Interim Fire Chief Kevin Donnelly

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to sign the Agreement for Hazardous Materials Team within San Joaquin County.

BACKGROUND INFORMATION: Since 1991, the Lodi Fire Department has been a participating member of the San Joaquin County Hazardous Materials Response Team and a signatory on a previous agreement. The team is made up of participating cities and agencies from throughout the County.

Attached to this Council Communication is a copy of the renewal of that agreement. This is a cooperative agreement of member agencies to provide mutual aid assistance as part of a County joint team to mitigate emergency hazardous materials incidents throughout the County. As a participating member, the City receives assistance when necessary from other members and assists other participants when needed.

The agreement rescinds previous agreements and remains in effect through 2015. The agreement allows the City of Lodi to withdraw with 30 days' notice should it desire.

Staff recommends that the City Council authorize the City Manager to sign the agreement.

FISCAL IMPACT: There are no additional costs to the City related to this agreement. The overall fiscal impacts to the City are significantly less as part of the County team when compared to providing a similar level of service to the community with Fire Department resources alone.

FUNDING AVAILABLE: None

Kevin Donnelly
Interim Fire Chief

KD/lh
Attachments
cc: City Attorney

APPROVED: _____
Blair King, City Manager

A-09- 278

AGREEMENT FOR HAZARDOUS MATERIALS TEAM
WITHIN SAN JOAQUIN COUNTY

THIS AGREEMENT is made and entered into this 27th day of May, 2009, by and between the COUNTY OF SAN JOAQUIN, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the cities of LODI, hereinafter referred to as "LODI," STOCKTON, hereinafter referred to as "STOCKTON," TRACY, hereinafter referred to as "TRACY," MANTECA, hereinafter referred to as "MANTECA," and RIPON, hereinafter referred to as "RIPON," and the LATHROP-MANTECA RURAL COUNTY FIRE PROTECTION DISTRICT, hereinafter referred to as "LATHROP-MANTECA," the WOODBRIDGE RURAL FIRE PROTECTION DISTRICT, hereinafter referred to as "WOODBRIDGE," the RIPON CONSOLIDATED FIRE DISTRICT, hereinafter referred to as "RIPON FIRE," the MOKELUMNE RURAL COUNTY FIRE PROTECTION DISTRICT, hereinafter referred to as "MOKELUMNE," the LINDEN-PETERS FIRE DISTRICT, hereinafter referred to as "LINDEN," the CLEMENTS RURAL FIRE DISTRICT, hereinafter referred to as "CLEMENTS," the ESCALON RURAL FIRE DISTRICT, hereinafter referred to as "ESCALON" and the DEFENSE LOGISTICS AGENCY FIRE DEPARTMENT, hereinafter referred to as "DEFENSE DEPOT SAN JOAQUIN."

RECITALS:

This Agreement is made with reference to the following facts:

1. The cost of maintaining hazardous materials emergency response capabilities within the boundaries of San Joaquin County, including within the incorporated cities of the County, can be reduced by a coordinated effort of the cities, fire districts, the County of San Joaquin, and federal and state agencies.
2. Greater efficiency and planning and response can be achieved by joining the efforts of the cities, fire districts, the County of San Joaquin, and federal and state agencies through creation of a Joint Hazardous Materials Team, centralization of hazardous materials records, and coordination of training and the use of vehicles, special equipment, and personnel.

ARTICLE 1. CREATION OF SAN JOAQUIN COUNTY JOINT
HAZARDOUS MATERIALS TEAM

A San Joaquin County Hazardous Materials Team, hereinafter referred to as "TEAM," is hereby created to provide technical services at the scene of a hazardous materials incident within the boundaries of San Joaquin County. Each of the parties to this Agreement agrees to designate a number of individuals commensurate with the size of its organization to serve on the TEAM under its operational and training policies.

Each party to this Agreement will be responsible to ensure that the individuals designated to fulfill its commitment under this paragraph are trained to the “Hazardous Materials Specialist” or “Technician” level pursuant to the statutes and regulations governing certification by the State of California and maintain annual physical and joint training standards as set by the Joint Team Steering Committee established in Article 4 below. Individuals designated as part of the TEAM serve on an “on-call basis” for any response within the unincorporated boundaries of the COUNTY and the boundaries of the entities that are parties to this Agreement.

It is anticipated that each jurisdiction will respond initially to an incident using its available resources as set forth in the TEAM policies and procedures prior to the activation of additional parties. No party to this Agreement shall be required to pay any compensation to any other party to this agreement for services rendered hereunder, the mutual advantages and protection afforded by this Agreement being considered adequate compensation to all the parties. Each party of this Agreement waives all claims against any other party for compensation for any loss, damage, personal injury or death occurring in consequence of the performance of this Agreement.

ARTICLE 2. PROVISION OF VEHICLES AND SPECIALIZED EQUIPMENT

Emergency response vehicles and specialized hazardous materials vehicles and equipment obtained and maintained by parties to this Agreement will be made available to support TEAM operations and response to emergency incidents under this Agreement. It will be the responsibility of the entity owning the vehicles and specialized equipment to maintain its vehicles and equipment and deliver them to the incident site if requested.

ARTICLE 3. TEAM STEERING COMMITTEE

A Team Steering Committee (TSC) is hereby established which consists of one representative of each of the party jurisdictions to this Agreement. It will be the responsibility of the TSC to set the policies and rules for the governance of the Committee, for annual physical and joint training standards for TEAM members, for joint operation and mobilization of the TEAM, and for common charge rates and conditions for response to non-signatory jurisdictions. The representative of each party jurisdiction must attend at least one-half of scheduled meetings of the TSC each year. COUNTY will provide staff support for the Committee.

The TSC shall confirm in writing that the proposed contribution to TEAM operations of each party to this Agreement is commensurate with the size of the party’s organization by a majority vote of the team representatives.

The TSC will be responsible for overseeing training standards, certification and recertification, and the monitoring requirements for certification. The TSC will keep staff records of each TEAM member and ensure that member parties notify TEAM members of medical tests requirements or training needed to maintain certification and

expertise required under this Agreement. The TSC will not have any operational authority over the TEAM.

ARTICLE 4. NATIONAL INCIDENT MANAGEMENT SYSTEM

All TEAM operations shall be in conformance to the National Incident Management System (NIMS), the California Standardized Emergency Management System (SEMS), and all existing California mutual aid agreements.

ARTICLE 5. CENTRAL HAZARDOUS MATERIALS RECORDS CENTER

COUNTY will establish and maintain a centralized hazardous materials records center with records pertaining to hazardous materials business plans and other records pertinent to responding to a hazardous materials incident such that the information will be available to each of the parties of this Agreement.

ARTICLE 6. TERM OF AGREEMENT

This Agreement shall be effective from the date executed by all the parties until 2015. This Agreement may be terminated prior to the conclusion of the term by mutual agreement of a majority of the member parties. This Agreement rescinds Agreements A-91-1628 and A-01-1297.

ARTICLE 7. WITHDRAWAL OF PARTY

Any party to this Agreement may withdraw as a party to this Agreement prior to the termination of the term of this Agreement upon giving 30 days prior written notice to the other parties.

ARTICLE 8. REMOVAL OF PARTIES FROM AGREEMENT

The TSC shall annually review participation of each party to the agreement for compliance with its terms and requirements. Any party, which has failed to meet one or more of the terms of this Agreement, or has failed to maintain the documented commensurate contribution to TEAM operations, shall be given notice and required to submit a remedial action plan within 60 days to TSC. Failure to implement the remedial action plan within 180 days of its approval by TSC will authorize the TSC by majority vote of all parties present to remove the non-complying party from this Agreement and the mutual benefits resulting therefrom. Such removal will be effective 30 days after the vote for such action by the TSC.

ARTICLE 9. ADDITIONAL PARTIES

Additional parties, who are public entities, including special districts, within the geographical boundaries of San Joaquin County, may join in this Agreement and become member entities upon execution of an Exhibit to this Agreement in which the entity

agrees to be subject to the conditions and terms of this Agreement. The executed Exhibit shall become a part of this Agreement automatically after the expiration of thirty days following notification by the new party to all other parties of the execution of the Exhibit.

Provided however, in the event any existing party to the Agreement gives the other parties notice of its objection to the addition of the particular entity within the thirty day notice period, the addition of such party to the Agreement shall require a two-thirds majority vote of the member parties present at a noticed meeting to address the issue.

IN WITNESS WHEREFORE THE PARTIES HAVE EXECUTED THIS AGREEMENT AS FOLLOWS:

ATTEST: LOIS M. SAHYOUN
Clerk of the Board of Supervisors
of the County of San Joaquin,
State of California

By Caroline Garcia
Deputy Clerk

COUNTY OF SAN JOAQUIN, a
political subdivision of the
State of California

By Leroy Ornellas
Leroy Ornellas, Chairman
Board of Supervisors

"COUNTY"

ATTEST:

By _____
City Clerk

Approved as to form _____
Deputy City Attorney [Signature]

CITY OF LODI

By _____
Signature

Title _____

"LODI"

ATTEST:

By _____
City Clerk

CITY OF STOCKTON

By _____
Signature

Title _____

"STOCKTON"

ATTEST:

By _____
City Clerk

CITY OF TRACY

By _____
Signature

Title _____
"TRACY"

ATTEST:

By _____
City Clerk

CITY OF MANTECA

By _____
Signature

Title _____
"MANTECA"

ATTEST:

By _____
City Clerk

CITY OF RIPON

By _____
Signature

Title _____
"RIPON"

ATTEST:

By _____

LATHROP-MANTECA RURAL
COUNTY FIRE PROTECTION
DISTRICT


By _____
Signature

Title _____
"LATHROP-MANTECA"

ATTEST:

By _____

WOODBIDGE RURAL FIRE
PROTECTION DISTRICT

By 
Signature

Title FIRE CHIEF

“WOODBIDGE”

ATTEST:

By _____

RIPON CONSOLIDATED FIRE
DISTRICT

By _____
Signature

Title _____

“RIPON FIRE”

ATTEST:

By _____

MOKELUMNE RURAL COUNTY
FIRE PROTECTION DISTRICT

By _____
Signature

Title _____

“MOKELUMNE”

ATTEST:

By _____

LINDEN-PETERS FIRE DISTRICT

By _____
Signature

Title _____

“LINDEN”

ATTEST:

CLEMENTS RURAL FIRE
DISTRICT

By _____

By _____

Signature

Title _____

“CLEMENTS”

ATTEST:

ESCALON RURAL FIRE
DISTRICT

By _____

By _____

Signature

Title _____

“ESCALON”

ATTEST:

DEFENSE LOGISTICS AGENCY
FIRE DEPARTMENT

By _____

By _____

Signature

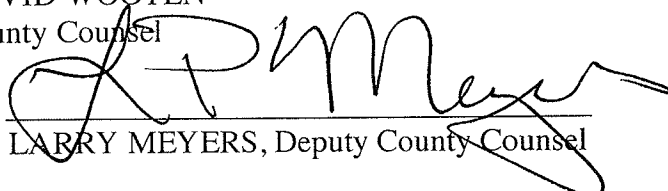
Title _____

“DEFENSE DEPOT SAN JOAQUIN”

APPROVED AS TO FORM:

DAVID WOOTEN
County Counsel

By


LARRY MEYERS, Deputy County Counsel

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO SIGN THE
AGREEMENT FOR HAZARDOUS MATERIALS TEAM
WITHIN SAN JOAQUIN COUNTY

=====

WHEREAS, The City of Lodi provides emergency hazardous materials mitigation and;

WHEREAS, the Lodi Fire Department participates in the mutual aid system and;

WHEREAS, the Lodi Fire Department has been party to previous agreements and has participated within the San Joaquin County Joint Hazardous Materials Team since 1991 and;

WHEREAS, such participation provides a benefit and enhancement of service to the community through shared cost of resources and;

WHEREAS, said agreement has been received and reviewed by city staff and forwarded to the City Manager; and

WHEREAS, staff recommends that Council authorize the City Manager to sign said agreement.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the agreement extending the Lodi Fire Department participation with the San Joaquin County Joint Hazardous Materials Team.

Date: August 19, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the Lodi City Council in a regular meeting held August 19, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi, and Authorize the City Manager to Execute the Agreement on Behalf of the City of Lodi.

MEETING DATE: August 19, 2009

SUBMITTED BY: Deputy City Manager

RECOMMENDED ACTION: Approve Memorandum of Understanding between Visit Lodi! Conference and Visitors Bureau and the City of Lodi, and further authorize the City Manager to execute the agreement on behalf of the City of Lodi.

BACKGROUND INFORMATION: In 2004, The Lodi City Council formed the Lodi Tourism Business Improvement District (LTBID) in adopting Ordinance 1753 pursuant to Streets and Highways Code Sections 36500. Ordinance 1753 was codified in Lodi Municipal Code Section 12.07 and later repealed and reenacted by Ordinance 1818. Visit Lodi! administers the funds raised under the LTBID assessments. The City historically provides additional funding for Visit Lodi! programs without a written agreement. In the FY 2009/10 budget, the Council approved funding for Visit Lodi! at a rate of 19 percent of the Transient Occupancy Tax (TOT) collections.

With the attached agreement, which lasts through FY 2013/14, the City agrees to continue providing 19 percent of TOT collections to Visit Lodi! in return for its efforts to market Lodi as a tourist destination and business meeting location. The agreement provides an incentive for Visit Lodi! in that as TOT revenues increase, there is a corresponding increase of city payments to Visit Lodi! under the agreement. The agreement represents best business practices in that it provides accountability for public funds. Services provided by Visit Lodi! include advertising, direct mail marketing, networking at trade shows, producing the annual Taste of Lodi event, producing a variety of publications and providing visitor information. Without this MOU, Council will need to revisit the funding level for Visit Lodi! each budget cycle.

It is the intent of this agreement to replace any prior agreements, clarify the relationship between the parties and foster the continued positive working relationship for the betterment of tourism in Lodi.

FISCAL IMPACT: Funding for Visit Lodi! is expected to generate an unknown amount of additional funding for local merchants and the City as tourism dollars are spent locally.

FUNDING: Funding of \$78,080 included in the 2009/10 budget (100431.8021.1)

Jordan Ayers
Deputy City Manager

Attachment

APPROVED: _____
Blair King, City Manager

Memorandum of Understanding
(Visit Lodi! Conference & Visitors Bureau Funding)

THIS Memorandum of Understanding ("Agreement") is entered into as of this ____ day of _____, 2009, by VISIT LODI! CONFERENCE AND VISITORS BUREAU ("Visit Lodi!") and the CITY OF LODI, ("City").

Background

A. The Lodi City Council formed the Lodi Tourism Business Improvement District (LTBID) in adopting Ordinance 1753 pursuant to Streets and Highways Code Sections 36500. Ordinance 1753 was codified in Lodi Municipal Code Section 12.07 and later repealed and reenacted by Ordinance 1818. Visit Lodi! Administers the funds raised under the LTBID assessments. The City has historically provided additional funding for Visit Lodi! programs without a written agreement.

B. It is the intent of this agreement to replace any prior agreements, clarify the relationship between the parties and foster the continued positive working relationship for the betterment of tourism in Lodi.

C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Funding. The City will provide funding for Visit Lodi! programs laid out in paragraph 2 of this Agreement equal to 19% of the City's Transient Occupancy Tax (TOT) collections. Payments will be made quarterly in the first 15 days of each quarter based upon the TOT revenue projections made in the applicable year's adopted budget. If actual revenues exceed budget projections, true-up payments will be made semi-annually in arrears. If actual revenues are lower than budget projections, true-up reductions will be applied to the following quarter's payments. City Funding shall not be used for any purpose prohibited by law with regard to public dollars including but not limited to political or religious purposes.

2. Visit Lodi! Services: Contract funding will be used to market and sell Lodi as a visitor destination. Scope of services include:

- Advertising
- Direct mail marketing
- Attending leisure travel tradeshow
- Attending group sales shows
- Producing quarterly mailers to group decision makers
- Hold quarterly FAM tours for meeting planners and group decision makers
- Produce annual Taste of Lodi event
- Produce visitor publications including:
 - Visitor guide
 - LodiView (monthly email event calendar)
 - Annual Attraction Map & Guide
 - Meeting Facilities brochure

Maintain visitor website
Fulfill requests for visitor information

3. Annual Reporting/Consultation. Visit Lodi shall account for all expenditures made of funds provided pursuant to this Agreement and shall annually report to the City Council regarding the same. To the extent feasible, the required annual report shall designate those tasks funded by TOT revenue, and shall include performance measures so success can be verified. No less than annually, Visit Lodi shall meet and confer with the City Manager or designee in order to evaluate activities and tasks.

4. No Joint Venture. The parties acknowledge that no joint venture is created by this contract and that no relationship or rights exist between the parties other than those expressly created by this Agreement.

5. Term. The term of this Agreement shall be from July 1, 2009 to June 30, 2014 unless otherwise terminated as provided herein.

6. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

7. Optional Termination. The City may terminate this Agreement without notice if successful efforts to dissolve the LTBD are instituted under the provisions of Streets and Highways Code Sections 36500 and following.

8. Indemnity and Insurance.

a. Indemnification by Visit Lodi!: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, Visit Lodi! ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Visit Lodi!, its personnel, employees, agents, volunteers, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

b. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which

they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

- c. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions-or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

- d. Insurance: During the term of the Agreement, Visit Lodi! must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the following types and limits of insurance:
- i. To the extent required by law, worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.
 - ii. Comprehensive commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.
 - iii. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.
 - iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- e. Named Insureds: All policies, except for workers compensation policies, shall name City and all of their associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions,

employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

- f. Evidence of Insurance: Visit Lodi! shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise Visit Lodi! of any claim or litigation that may result in liability to Visit Lodi!. Visit Lodi! shall immediately advise City of any claim or litigation that may result in liability to City.

- g. Cancellation of Policies of Insurance: Visit Lodi!' insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

- h. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self-insurance program that complies with all laws and regulations governing self-insurance.

9. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Returned Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

If to City, to: City of Lodi
P. O. Box 3006
221 W. Pine Street
Lodi, CA 94240
Fax # (209) 333-6807
Attn: Jordan Ayers

If to VISIT LODI!, to: Visit Lodi! Lodi Conference and Visitors Bureau
115 South School Street, Suite 9
Lodi, California 95240
Fax# (209) 365-1191
Attn: Nancy Beckman

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

11. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

12. Miscellaneous.

- a. Visit Lodi! and City represent that each, respectively, has full right, power, and authority to execute this Agreement.
- b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.
- c. This Agreement shall be construed in accordance with the laws of the State of California.
- d. This Agreement supersedes any prior written or oral agreement between the City and Visit Lodi!.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in Section 4 above.

CITY OF LODI, a municipal corporation

VISIT LODI! LODI CONFERENCE
AND VISITORS BUREAU

Blair King, City Manager

Nancy Beckman, Executive Director

Attest:

Randi Johl, J.D., City Clerk

Approved as to Form

D. Stephen Schwabauer, City Attorney



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a Resolution Authorizing the City of Lodi's Participation in an Interlocal Agreement Regarding the 2009 Edward Byrne Memorial Justice Assistance Grant (JAG), and Authorizing the City Manager to Execute Agreement on Behalf of the City of Lodi

MEETING DATE: August 19, 2009

PREPARED BY: David J. Main, Chief of Police

RECOMMENDED ACTION: Adopt a resolution authorizing the City of Lodi to participate in an interlocal agreement between the County of San Joaquin and the cities of Lodi, Stockton, Manteca and Tracy regarding the 2009 Edward Byrne Memorial Justice Assistance Grant (JAG), and authorizing the City Manager to execute the agreement on behalf of the City of Lodi.

BACKGROUND INFORMATION: The Edward Byrne Memorial Justice Assistance Grant Program provides funding for states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system.

JAG funds are allocated based on population and crime statistics, in combination with a minimum allocation to ensure that each state and territory receives an appropriate share. Lodi received funding in 2006 and 2007, but was not eligible in 2008. In 2009, Lodi is eligible to receive \$30,000 in JAG grant funding.

On July 15, 2009 the City Council approved a spending plan authorizing the purchase of technology related to criminal justice as part of this agreement. Failure to adopt the resolution would prevent the City from receiving these funds.

FISCAL IMPACT: This is one-time revenue. The proposed expenditure will relieve the General Fund.

David J. Main
Chief of Police

DJM:sm
Cc: City Attorney

APPROVED: _____
Blair King, City Manager

**INTERLOCAL MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE CITY OF STOCKTON, CA (LEAD AGENCY) AND THE CITIES OF
LODI, MANTECA, TRACY AND SAN JOAQUIN COUNTY
2009 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD**

This Agreement is made and entered into this 11th day of August, 2009, by and between the City of Stockton, California (lead agency) acting by and through its governing body, the City Council, hereinafter referred to as STOCKTON, and the City of Lodi, California acting by and through its governing body, the City Council, hereinafter referred to as LODI; the City of Manteca, California acting by and through its governing body, the City Council, hereinafter referred to as MANTECA; the City of Tracy, California acting by and through its governing body, the City Council, hereinafter referred to as TRACY and San Joaquin County, California, acting by and through its governing body, the Board of Supervisors, including San Joaquin County Probation Department, hereinafter PROBATION; San Joaquin County District Attorney, hereinafter DISTRICT ATTORNEY and the San Joaquin County Sheriff's Office, hereinafter SHERIFF'S OFFICE collectively referred to as RECIPIENTS witnesseth:

WHEREAS, each party, in carrying out the Recipient Programs, identified in **Attachment A**, shall make that performance or payment for Recipient Programs from the 2009 Byrne Justice Assistance Grant (JAG) Program award;

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of the Parties and that the undertaking will benefit the public;

WHEREAS, STOCKTON agrees to distribute the proceeds of the JAG award for the Recipient Programs identified in **Attachment A**; and

WHEREAS, the RECIPIENTS and the STOCKTON believe it to be in their best interests to reallocate the JAG funds;

NOW THEREFORE, STOCKTON AND RECIPIENTS agree as follows:

Section 1.

STOCKTON agrees to distribute the JAG funds for each Recipient Programs as detailed in **Attachment A.**

Section 2.

RECIPIENTS agree to use the funds for the programs submitted to STOCKTON as identified in **Attachment A.**

Section 3.

- a. It understood that the relationship between the parties is an MOU relationship between public agencies and not an agency; and nothing herein shall be constructed to the contrary.
- b. The Parties agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the parties joint ventures or partners.
- c. This MOU is made and entered into for the sole protection and benefit of the parties and their successors, and assigns. No other person shall have any right of action based upon any provision in this MOU.
- d. No party may request or demand payment for Recipient Programs from any source of STOCKTON's revenue other than the JAG grant funds as set forth in attachment A.

Section 5

All notices required or provided for under this MOU shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested to the

principal offices of STOCKTON and RECIPIENTS. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

Notice to STOCKTON:

City of Stockton
J. Gordon Palmer Jr.
City Manager
City of Stockton
425 N. El Dorado, 2nd Floor
Stockton, CA 95202

Notice to LODI:

City of Lodi
Blair King, City Manager
221 W. Pine Street
Lodi, CA 95240

Notice to MANTECA:

City of Manteca
Steve Pinkerton, Jr. City Manager
1001 W. Center Street
Manteca, CA 95337

Notice to TRACY:

City of Tracy:
R. Leon Churchill, Jr.
City Manager
333 Civic Center Plaza
Tracy, CA 95376

Notice to San Joaquin County:

San Joaquin County
Manuel Lopez, County
Administrator
222 E. Weber Avenue
Stockton, CA 95202

RECIPIENTS shall defend, indemnify, and hold harmless the CITY OF STOCKTON or its agents, officers, and employees from any claim, action or proceedings against it or its agents, officers, or employees to attack, set aside, void, or annul any act or

omissions of the CITY OF STOCKTON or its agents, officers, and employees arising out of each signatory agencies' own use of any JAG grant funds arising from this MOU.

IN WITNESS WHEREOF this MOU has been executed by the parties on the day and year first above written.

CITY OF STOCKTON

CITY OF LODI

J. Gordon Palmer Jr., City Manager

Blair King, City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM

City Attorney
CITY OF TRACY

City Attorney
CITY OF MANTECA

R. Leon Churchill, Jr., City Manager

Steve Pinkerton Jr., City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney

COUNTY OF SAN JOAQUIN
Chairman, Board of Supervisors

APPROVED AS TO FORM:

County Counsel

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY OF LODI'S PARTICIPATION IN AN INTERLOCAL
AGREEMENT REGARDING THE 2009 EDWARD BYRNE
MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) AND
AUTHORIZING THE CITY MANAGER TO EXECUTE
AGREEMENT ON BEHALF OF THE CITY OF LODI

=====

WHEREAS the Edward Byrne Memorial Justice Assistance Grant Program provides funding for state and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system; and

WHEREAS the procedure for allocating JAG funds is a formula based on population and crime statistics, in combination with a minimum allocation to ensure that each state and territory receives an appropriate share; and

WHEREAS in 2009 Lodi is eligible to receive \$30,000 in JAG grant funding; and

WHEREAS on July 15, 2009 the City Council approved a spending plan authorizing the purchase of technology related to criminal justice as part of this agreement.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize City of Lodi participation in an Interlocal Agreement between the County of San Joaquin and the cities of Lodi, Stockton, Escalon, Manteca, Ripon and Tracy regarding the 2009 Edward Byrne Memorial Justice Assistance Grant, thereby accepting awarded funding in the amount of \$30,000 for the purchase of technology and equipment related to criminal justice; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the 2009 Edward Byrne Memorial Justice Assistance Grant Agreement on behalf of the City of Lodi.

Dated: August 19, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 19, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing Administrative Settlement with California Regional Water Quality Control Board for Discharge Violations

MEETING DATE: August 19, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing administrative settlement with the California Regional Water Quality Control Board (Board).

BACKGROUND INFORMATION: On May 13, 2009, the City of Lodi received a draft Administrative Civil Liability Complaint (ACLC) from the Board outlining proposed Minimum Mandatory Penalties (MMP) for non-serious discharge violations that occurred between January 1, 2000 and March 31, 2009. A total of seven violations were noted and these are in addition to the seven violations addressed in complaint R5-2008-0562 that covered the period between January 1, 2000 and December 31, 2007. The proposed MMP's are associated with operational issues, sampling errors, coliform limitation exceedences, and other minor issues. A copy of the ACLC is provided in Exhibit A.

On June 15, 2009, City staff responded to the ACLC (Exhibit B) agreeing with the proposed violations and requested the Board consider the Statute of Limitations pursuant to Federal Clean Water Act (CWA) and the California Code of Civil Procedure, Section 338(i). The Board responded on July 16, 2009 (Exhibit C) stating the Statute of Limitations in the Clean Water Act does not apply to this type of administrative proceeding because it applies only to actions by the Federal Government. Additionally, the administrative action falls outside the scope of California Code of Civil Procedure, Section 338(i) because it only applies to time limits on civil suits in the courts. Although the Board's order requires payment by August 17, 2009, City staff has been allowed delayed payment pending City Council action on August 19, 2009.

The California Water Code Section 13385 allows the Board to impose administrative civil liabilities (MMP) for each discharge violation that qualifies for a MMP. The current MMP for both serious and non-serious violations is \$3,000 per occurrence. Staff recommends the City pay the fine of \$21,000. Failure to pay the fine could result in increased oversight by the Regional Board and additional penalties for nonpayment.

FISCAL IMPACT: Wastewater operations costs will increase by \$21,000.

FUNDING AVAILABLE: Budgeted Expenditure

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Charles Swimley, Water Services Manager
FWS/CS/dsg

Attachments

cc: D. Stephen Schwabauer, City Attorney
Charles E. Swimley, Jr., Water Services Manager
Del Kerlin, Wastewater Treatment Superintendent

APPROVED: _____
Blair King, City Manager



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

13 May 2009

F. Wally Sandelin
Public Works Director
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

RECEIVED

MAY 14 2009



CITY OF LODI
PUBLIC WORKS DEPARTMENT

DRAFT RECORD OF VIOLATIONS FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is a draft Record of Violations (ROV) that staff has prepared prior to issuance of an Administrative Civil Liability Complaint (ACLC). The ACLC will be issued pursuant to California Water Code Section 13385 for violations of effluent limitations of Waste Discharge Requirements Orders 5-00-013 and R5-2007-0113 (NPDES No. CA0079243) by the City of Lodi's White Slough Facility. The ACLC would propose an Administrative Civil Liability of eighteen thousand dollars (\$18,000) in mandatory minimum penalties (MMPs) for effluent limitation violations.

The attached ROV lists effluent violations which our records show occurred at the facility from 1 January 2000 through 31 March 2009. During review of this matter, staff determined that ACLC Complaint R5-2008-0562 (previously issued to the City of Lodi) had not included four violations subject to MMPs. The attached ROV includes these four violations. In addition, staff has identified two violations subject to MMPs that occurred since issuance of ACLC Complaint R5-2008-0562. In summary, MMPs in the amount of twelve thousand dollars (\$12,000) are due for the omitted violations from 1 January 2000 through 31 December 2007, and six thousand dollars (\$6,000) for the additional violations that occurred from 1 January 2008 through 31 March 2009 for a total of eighteen thousand dollars (\$18,000). In the attached ROV, the violations currently subject to MMPs are shown in bold.

Please review the attached ROV for accuracy and submit any comments/corrections by **15 June 2009**. We plan to issue the ACLC after that date. If you have any questions or comments regarding the violations, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

Wendy Wyels

WENDY WYELS
Supervisor
Compliance and Enforcement Section

Enclosure: Attachment A

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-XXXX

City of Lodi

White Slough Water Pollution Control Facility

RECORD OF VIOLATIONS (1 January 2000 – 31 March 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3	174274
2	21-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3	185932
3	28-Oct-00	Coliform	MPN/100ml	500	1600	Daily	3	185933
4	11-Nov-00	Coliform	MPN/100ml	500	1600	Daily	3	185934
5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4	185877
6	1-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4	185930
7	22-Feb-01	Coliform	MPN/100ml	500	1600	Daily	4	185931
8	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4	185936
9	22-Oct-01	TSS	mg/L	50	51	Daily	3	205118
10	7-Feb-02	Coliform	MPN/100ml	500	1600	Daily	3	205119
11	13-Nov-02	TSS	mg/L	50	67	Daily	3	205334
12	24-Dec-02	Coliform	MPN/100ml	500	900	Daily	3	205335
13	6-Mar-03	Coliform	MPN/100ml	500	1600	Daily	3	247230
14	8-Nov-05	Coliform	MPN/100ml	23	50	Daily	3	368528
15	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	3	756451
16	12-Nov-05	Coliform	MPN/100ml	2.2	8	7-day	3	368534
17	29-Nov-05	Coliform	MPN/100ml	23	50	Daily	4	368529
18	31-Jan-06	Coliform	MPN/100ml	23	30	Daily	4	368545
19	20-Feb-06	Coliform	MPN/100ml	23	240	Daily	4	368555
20	24-Feb-06	Coliform	MPN/100ml	23	300	Daily	4	368556
21	3-Apr-06	Coliform	MPN/100ml	23	50	Daily	4	756463
22	13-Oct-06	Coliform	MPN/100ml	23	30	Daily	3	756464
23	30-Oct-06	Coliform	MPN/100ml	23	30	Daily	3	756465
24	12-Mar-07	Coliform	MPN/100ml	23	50	Daily	3	756502
25	4-Sep-07	Coliform	MPN/100ml	23	50	Daily	3	756506
26	15-Sep-07	Coliform	MPN/100ml	23	80	Daily	3	756526
27	15-Sep-07	Coliform	MPN/100ml	2.2	3	7-day	4	756532
28	22-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4	756548
29	29-Sep-07	Coliform	MPN/100ml	2.2	7	7-day	4	756563
30	2-Feb-08	Coliform	MPN/100ml	2.2	4	7-day median	4	756568
31	5-Nov-08	Manganese	µg/L	119	130	Daily Max	3	817498
32	8-Nov-08	Coliform	MPN/100ml	2.2	11	7-day median	3	817493
33	10-Jan-09	Coliform	MPN/100ml	2.2	4	7-day median	3	817500
34	27-Feb-09	Coliform	MPN/100ml	23	27	Instantaneous	4	817489

ATTACHMENT A
CITY OF LODI, WHITE SLOUGH WWTP
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-XXXX

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

ADDITIONAL VIOLATIONS FROM 1/1/2000 THROUGH 12/31/2007

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	4
<u>Total Additional Violations Subject to MPs:</u>	<u>4</u>

Additional Mandatory Minimum Penalty (2000-2007) = (0 Serious Violations + 4 Non-Serious Violations) x \$3,000 = \$12,000

VIOLATIONS FROM 1/1/2008 THROUGH 3/31/2009

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	2
<u>Total Violations Subject to MPs:</u>	<u>2</u>

Mandatory Minimum Penalty (2008) = (0 Serious Violations + 2 Non-Serious Violations) x \$3,000 = \$6,000

Total Mandatory Minimum Penalty Due= \$12,000 + \$6,000 = \$18,000

CITY COUNCIL

LARRY D. HANSEN,
Mayor
PHIL KATZAKIAN,
Mayor Pro Tempore
SUSAN HITCHCOCK
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

MUNICIPAL SERVICE CENTER
1331 SOUTH HAM LANE
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6740
FAX (209) 333-6841
EMAIL pwdept@lodi.gov
<http://www.lodi.gov>

BLAIR KING,
City Manager

RANDI JOHL,
City Clerk

D. STEPHEN SCHWABAUER,
City Attorney

F. WALLY SANDELIN,
Public Works Director

June 15, 2009

Ms. Wendy Wyels
Supervisor, NPDES Compliance and Enforcement Section
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova CA 95670-6114

SUBJECT: Administrative Civil Liability Complaint- Mandatory Minimum Penalties
City of Lodi White Slough Water Pollution Control Facility
Order Number R5-2007-0113 and R5-00-031

Dear Ms. Wyels:

The purpose of this letter is to present the City of Lodi's (City's) review of the draft Record of Violations (draft ROV) issued by the Central Valley Regional Water Quality Control Board (Regional Board) on May 13, 2009. The draft ROV outlines violations of effluent limitations by the City's White Slough Water Pollution Control Facility (WPCF) that have occurred since January 28, 2000 through March 31, 2009. We understand that this draft ROV supplements the Administrative Civil Liability Complaint (ACLC) R5-2008-0562 previously issued to the City by the Regional Board, with four (4) additional alleged violations for the period of January 1, 2000 through December 31, 2007, as well as five (5) violations between January 1, 2008 and March 31, 2009. In summary, the draft ROV includes six (6) violations subject to Mandatory Minimum Penalties (MMPs); resulting in a fine of \$18,000 for the City.

As mentioned in our response to the previous ACLC R5-2008-0562, we request clarification on the statute of limitations that applies to MMPs. Specifically, the City believes imposition of penalties for violations occurring more than three years ago is barred by the statute of limitations under the Porter-Cologne Water Quality Act (Code of Civ. Proc. §338(i)). At a minimum, a five year statute of limitations applies under federal law, as Chapter 5.5 of the Water Code to be construed "to ensure consistency" with the requirements for state programs implementing the Clean Water Act (CWC § 13372(a)), and the statute of limitations for penalties assessed pursuant to the Clean Water Act is five years. (28 U.S.C. §2462; see also *Public Interest Research Group of New Jersey, Inc. v. Powell Duffryn Terminals*, 913 F. 2d 64, 75 (3rd Cir. 1990)). If the Regional Board

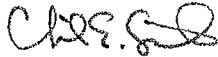
Ms. Wendy Wyels
California Regional Water Quality Control Board
Page 2

intends to assess penalties outside the allowable time periods, the City requests that the Regional Board explain the legal basis for this action.

We have reviewed the alleged violations and take no exception that they meet the Regional Board's interpretations regarding the assessment of MMPs. The City intends to pay the assessed MMPs, but requests that prior to issuing the ACLC, that the February 1, 2001 pH violation be revisited with respect to the Water Code statute of limitations. Thank you for your consideration.

Please contact me at (209) 333-6740 or at cswimley@lodi.gov if you have any questions in this matter.

Sincerely,



Charles E. Swimley, Jr., P.E.
Water Services Manager

CES/myn

cc: F. Wally Sandelin, Public Works Director
Del Kerlin, Wastewater Treatment Superintendent
Ms. Roberta Larson, Somach, Simmons & Dunn
Ms. Kathryn Gies, West Yost Associates



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

cc: Del Kerwin
Charles Swinley



Arnold
Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental
Protection

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

RECEIVED

Exhibit C

16 July 2009

JUL 20 2009

F. Wally Sandelin
Public Works Director
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910



CITY OF LODI
PUBLIC WORKS DEPARTMENT

CERTIFIED MAIL
7006 2150 000 7132 2453

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, CITY OF LODI WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, SAN JOAQUIN COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code section 13385, for violations of Waste Discharge Requirements (WDRs) Order Nos. 5-00-031 and R5-2007-0113 (NPDES No. CA0079243) by the City of Lodi White Slough Water Pollution Control Facility. The Complaint charges the City of Lodi (Discharger) with civil liability in the amount of **twenty-one thousand dollars (\$21,000)**. This represents the sum of accrued Mandatory Minimum Penalties for effluent limitation violations not addressed in Complaint R5-2008-0562 (violations 6, 18-20) plus violations which occurred from 1 January 2008 through 31 March 2009.

On 13 May 2009, Central Valley Water Board staff issued a draft Record of Violations (ROV). On 15 June 2009, the Discharger responded and agreed with the violations. This Complaint increases the civil liability from \$18,000 to \$21,000 because violation 34, the fourth violation during the preceding 180 days, was incorrectly coded as exempt from MMPs.

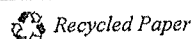
The Discharger requested consideration of the statute of limitations pursuant to the Federal Clean Water Act (CWA) and in the California Code of Civil Procedure, section 338(i). The statute of limitations in the CWA does not apply to this type of administrative proceeding because it only applies to actions by the federal government. This administrative action falls outside the scope of California Code of Civil Procedure, section 338(i) because it only applies to time limits on the commencement of civil suits in the courts.

Pursuant to CWC section 13323, the Discharger may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **17 August 2009**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting it to this office by **17 August 2009; or**
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

RECEIVED

California Environmental Protection Agency



JUL 23 2009

CITY OF LODI
MUNICIPAL SERVICE CENTER

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period, starting from the date of this Complaint, during which time interested parties may comment on this action by submitting information to this office, attention Barry Hilton. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

If the Central Valley Water Board does not receive a signed waiver within 30 days of the date of this Complaint (**by 17 August 2009**), then a hearing will be scheduled for the **7/8/9 October 2009** Central Valley Water Board meeting in Rancho Cordova. The Central Valley Water Board's Prosecution Team has prepared the enclosed draft Hearing Procedure to govern the conduct of such a hearing. Any objections to this draft Hearing Procedure must be received by Lori Okun, whose contact information is listed in the draft Hearing Procedure, **by 5 p.m. on 27 July 2009**.

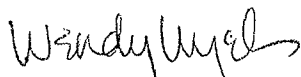
Any comments or evidence concerning the enclosed Complaint must be submitted in accordance with the deadlines contained in the draft Hearing Procedure, unless these deadlines are changed by the Central Valley Water Board's Adjudicatory Team, either on their own accord or upon request.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.



WENDY WYELS

Supervisor

Compliance and Enforcement Section

Enclosure: ACLC No. R5-2009-0555
Draft Hearing Procedures
Hearing Waiver

cc w/ encl: Mr. Kenneth Landau, Central Valley Water Board, Rancho Cordova
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Ms. Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
San Joaquin County Environmental Health Department, Stockton
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0555

MANDATORY PENALTY
IN THE MATTER OF

CITY OF LODI
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
SAN JOAQUIN COUNTY

This Complaint is issued to the City of Lodi, White Slough Water Pollution Control Facility, (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders 5-00-031 and R5-2007-0113 (NPDES No. CA0079243).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service for the City of Lodi. Treated wastewater is discharged to Dredger Cut, tributary to White Slough, tributary to Bishop Cut, tributary to the Sacramento-San Joaquin Delta, a water of the United States.
2. On 28 January 2000, the Central Valley Water Board issued WDRs Order 5-00-031 to regulate discharges of waste from the water pollution control facility (WPCF).
3. On 10 September 2004, the Central Valley Water Board issued Resolution R5-2004-0125, which extended certain compliance deadlines contained in WDRs Order 5-00-031 from 1 May 2004 to 21 January 2005.
4. On 14 September 2007, the Central Valley Water Board issued WDRs Order R5-2007-0113, effective 3 November 2007, which contained new requirements and rescinded WDRs Order 5-00-031. Although this matter was petitioned to the State Water Resources Control Board, and an Order is currently being finalized that will remand portions of these WDRs to the Central Valley Water Board for re-consideration, the subject of this petition was unrelated to the effluent limit violations that are charged in this Complaint.
5. On 14 September 2007, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2007-0114, providing a time schedule and establishing interim effluent limits until 17 May 2010 for nitrate, nitrite, and manganese.
6. On 14 August 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint (ACLC) R5-2008-0562 for mandatory minimum penalties (MMPs) for effluent violations from 1 January 2000 through

31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved regarding the cited violations.

7. On 13 May 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV). The ROV included violations not included in ACLC R5-2008-0562 as well as violations accrued since issuance of that Order. On 15 June 2009, the Discharger responded. The Discharger agreed with the violations not previously assessed MMPs and the additional new violations. In addition, staff have determined that violation 34 on the draft Record of Violations is subject to MMPs because it was the fourth violation within the preceding 180-day period.
8. The Discharger requested clarification regarding the five-year statute of limitations in the federal Clean Water Act (CWA). This statute of limitations in the CWA only applies to actions by the federal government and does not apply to this type of administrative proceeding.
9. The Discharger requested clarification regarding the three-year statute of limitations in the California Code of Civil Procedures, section 338(i). The Code section of which section 338 is a part makes it clear that section 338 applies only to time limits on the commencement of civil suits in the courts. Title 2 is intended to prescribe time periods for the bringing of civil law suits. This administrative complaint falls outside the scope of section 338. (See also *Bernd v. Eu* (1979) 100 Cal.App.3d 511, 161 Cal.Rptr. 58; *Rudolph v. Athletic Commission* (1960) 177 Cal.App.2d 1, 22, 1 Cal.Rptr. 898).
10. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(i)(1) states,

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

11. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

12. WDRs Order 5-00-031 Effluent Limitations No. B.1, states, in part: *"The effluent shall not exceed the following limits:"*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
<u>Total Suspended Solids</u>	mg/L	20 ²	40 ²	--	50 ²

² To be ascertained by a flow proportional 24-hour composite sample.

13. WDRs Order 5-00-031 Effluent Limitations No. B.2. states, in part: *"Interim total coliform organism and BOD wastewater effluent limits shall be in effect through 30 April 2004. The interim effluent limits are as follows:"*

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
<u>Total Coliform</u>	MPN/100m L	23 ¹	--	500

¹ Monthly median value.

This deadline was extended by Resolution R5-2004-0125 to 21 January 2005.

14. WDRs Order 5-00-031 Effluent Limitations No. B.3., states, in part: *"The effluent shall not exceed the following limits in accordance with the time schedule in Provision H.2:"*

<u>Constituents</u>	<u>Units</u>	<u>Daily Average</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
<u>Total Coliform Organisms</u>	MPN/100m L	--	--	2.2 ⁴	23

⁴ As a 7-day median.

Provision H.2 was amended by Resolution R5-2004-0125 to extend the time schedule for full compliance to 21 January 2005 from 30 April 2004.

15. WDRs Order 5-00-031 Effluent Limitations B.7., requires, in part, *"The discharge shall not have a pH less than 6.5 nor greater than 8.5."*
16. WDRs Order R5-2007-0113 Effluent Limitations No. IV.A.1.e., Total Coliform Organisms, states: *"Effluent total coliform organisms shall not exceed:*
- i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median; and
 - ii. 23 MPN/100 mL, more than once in any 30-day period.

17. According to the Discharger's self-monitoring reports, the Discharger committed thirty-five (35) non-serious violations of the above effluent limitations contained in Orders 5-00-031 and R5-2007-0113 during the period beginning 1 January 2000 and ending 31 March 2009. Fourteen (14) of the non-serious violations are subject to mandatory penalties (MMPs) under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. Seven (7) of these were assessed MMPs under ACLC R5-2008-0562. The mandatory minimum penalty for the **seven (7) additional** non-serious violations is **twenty-one thousand dollars (\$21,000)**.
18. The total amount of the mandatory penalties assessed for the cited effluent violations is **twenty-one thousand dollars (\$21,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Complaint.
19. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF LODI IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty-one thousand dollars (\$21,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **7/8/9 October 2009**, unless the Discharger does either of the following by **17 August 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twenty-one thousand dollars (\$21,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ORIGINAL SIGNED BY

PAMELA C. CREEDON, Executive Officer

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555
MANDATORY PENALTY
CITY OF LODI
WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
SAN JOAQUIN COUNTY

16 July 2009

DATE

Attachment A: Record of Violations
BLH: 20-Jul-09

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of Lodi (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2009-0555 (hereinafter the "Complaint");
 2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
 3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
 4. ☐ **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **twenty-one thousand dollars (\$21,000)** by check, which contains a reference to "ACL Complaint No. R5-2009-0555" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **17 August 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **7/8/9 October 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- or-**
5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
 6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2009-0555

City of Lodi
White Slough Water Pollution Control Facility

RECORD OF VIOLATIONS (1 January 2000 – 31 March 2009) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program Nos. 5-00-031 and R5-2007-0113)
New violations are in **boldface** type.

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure d</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	24-Feb-00	pH	pH units	6.5	6.4	Instantaneous	3*	174274
2	21-Oct-00	Coliform	MPN/100mL	500	1600	Daily	3*	185932
3	28-Oct-00	Coliform	MPN/100mL	500	1600	Daily	3*	185933
4	11-Nov-00	Coliform	MPN/100mL	500	1600	Daily	3*	185934
5	28-Jan-01	pH	pH units	6.5	6.3	Instantaneous	4*	185877
					Instantaneous			
6	1-Feb-01	pH	pH units	6.5	6.4	s	4	185930
7	22-Feb-01	Coliform	MPN/100mL	500	1600	Daily	4*	185931
8	26-Feb-01	pH	pH units	6.5	6.4	Instantaneous	4*	185936
9	22-Oct-01	TSS	mg/L	50	51	Daily	3*	205118
10	7-Feb-02	Coliform	MPN/100mL	500	1600	Daily	3*	205119
11	13-Nov-02	TSS	mg/L	50	67	Daily	3*	205334
12	24-Dec-02	Coliform	MPN/100mL	500	900	Daily	3*	205335
13	6-Mar-03	Coliform	MPN/100mL	500	1600	Daily	3*	247230
14	8-Nov-05	Coliform	MPN/100mL	23	50	Daily	3*	368528
15	11-Nov-05	pH	pH units	6.5	6.4	Instantaneous	3*	756451
16	12-Nov-05	Coliform	MPN/100mL	2.2	8	7-day	3*	368534
17	29-Nov-05	Coliform	MPN/100mL	23	50	Daily	4*	368529
			MPN/100m					
18	31-Jan-06	Coliform	L	23	30	Daily	4	368545
			MPN/100m					
19	20-Feb-06	Coliform	L	23	240	Daily	4	368555
			MPN/100m					
20	24-Feb-06	Coliform	L	23	300	Daily	4	368556
21	3-Apr-06	Coliform	MPN/100mL	23	50	Daily	4*	756463
22	13-Oct-06	Coliform	MPN/100mL	23	30	Daily	3*	756464
23	30-Oct-06	Coliform	MPN/100mL	23	30	Daily	3*	756465
24	12-Mar-07	Coliform	MPN/100mL	23	50	Daily	3*	756502
25	4-Sep-07	Coliform	MPN/100mL	23	50	Daily	3*	756506
26	15-Sep-07	Coliform	MPN/100mL	23	80	Daily	3*	756526
27	15-Sep-07	Coliform	MPN/100mL	2.2	3	7-day	3*	756532
28	22-Sep-07	Coliform	MPN/100mL	2.2	7	7-day	4*	756548
29	29-Sep-07	Coliform	MPN/100mL	2.2	7	7-day	4*	756563
			MPN/100m					
30	2-Feb-08	Coliform	L	2.2	4	7-day median	4	756568
31	30-Sep-08	BOD	mg/L	10	11	Monthly	3	824450
		Manganese						
32	5-Nov-08	e	µg/L	119	130	Daily Max	3	817498
			MPN/100m					
33	8-Nov-08	Coliform	L	2.2	11	7-day median	3	817493
			MPN/100m					
34	10-Jan-09	Coliform	L	2.2	4	7-day median	4	817500
			MPN/100m					
35	27-Feb-09	Coliform	L	23	27	Instantaneous	4	817489
					s			

ATTACHMENT A
CITY OF LODI, WHITE SLOUGH WWTP
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0555

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

ADDITIONAL VIOLATIONS FROM 1/1/2000 THROUGH 12/31/2007

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	0
Non-serious Violations Subject to MPs:	4
<u>Total Additional Violations Subject to MPs:</u>	<u>4</u>

Additional Mandatory Minimum Penalty (2000-2007) = (0 Serious Violations + 4 Non-Serious Violations) x \$3,000 = \$12,000

VIOLATIONS FROM 1/1/2008 THROUGH 3/31/2009

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	3
<u>Total Violations Subject to MPs:</u>	<u>3</u>

Mandatory Minimum Penalty (2008) = (0 Serious Violations + 3 Non-Serious Violations) x \$3,000 = \$9,000

Total Mandatory Minimum Penalty Due= \$12,000 + \$9,000 = \$21,000

* Violations assessed Mandatory Minimum Penalties in Administrative Civil Liability Complaint R5-2008-0562.

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
ADMINISTRATIVE SETTLEMENT WITH CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD FOR
ALLEGED DISCHARGE VIOLATIONS

=====

WHEREAS, the California Water Code Section 13385 allows the California Regional Water Quality Control Board (Board) to impose administrative civil liabilities (fines) for each discharge violation that qualified for a Mandatory Minimum Penalty (MMP); and

WHEREAS, on May 13, 2009, the City of Lodi received a draft Administrative Civil Liability Complaint (ACLC) from the Board outlining alleged MMP's for non-serious discharge violations that were not addressed in complaint R5-2008-0562 (which covered violations between January 1, 2000 and December 31, 2007) plus violations that occurred between January 1, 2008 and March 31, 2009. The purported violations are associated with operational upsets, sampling errors, coliform limitation exceedences, and other minor issues; and

WHEREAS, on June 15, 2009, the City responded to the Draft ACLC agreeing with the alleged violations and, at Council direction, requested the Board consider the Statute of Limitations pursuant to Federal Clean Water Act (CWA) and the California Code of Civil Procedure, Section 338(i). In the July 16, 2009 ACLC, the Board responds the Statute of Limitations in the Clean Water Act does not apply to this type of administrative proceeding because it applies only to actions by the Federal Government. Additionally, the administrative action falls outside the scope of California Code of Civil Procedure, Section 338(i) because it only applies to time limits on civil suits in the courts; and

WHEREAS, the California Water Code Section 13385 allows the Board to impose administrative civil liabilities (fines) for each discharge violation that qualifies for an MMP. The current MMP for both serious and non-serious violations is \$3,000 per occurrence. Staff recommends the City pay the fine of \$21,000.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize payment for the alleged civil liability of \$21,000 to the California Regional Water Quality Control Board not previously addressed in Complaint R5-2008-0562 (Violations 6, 18-20) plus violations which occurred from January 1, 2008 through March 31, 2009.

Dated: August 19, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 19, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set Public Hearing for October 7, 2009, to Consider Resolution Approving New Rates for Solid Waste Collection

MEETING DATE: August 19, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Set a public hearing for October 7, 2009, to consider a resolution approving new rates for solid waste collection.

BACKGROUND INFORMATION: As a part of the franchise agreement with Central Valley Waste Services, rates for solid waste collection are to be adjusted annually. Section 7c of the franchise agreement states that starting April 1, 2005, rates shall be adjusted in a percentage amount equal to 80% of the annual change in the Consumer Price Index for all Urban Consumers for San Francisco-Oakland-San Jose, California area, All Items (1982-84=100). The percent increase in rates based on the CPI change is 2.488%. Section 7f of the franchise agreement also states that the contractor may request additional increases due to extraordinary increases in landfill costs. Central Valley Waste Services is asking for an additional increase in rates for increased disposal costs that have risen by 0.459%. The total rate increase requested by Central Valley Waste Services is 2.947%.

The proposed rates are attached. For most residential customers, the rate increase will be less than one dollar. The effective date of the proposed rate is October 8, 2009. Prior to the public hearing, Central Valley Waste Services will issue public notification pursuant to the requirements of Proposition 218. Central Valley Waste Services will incur the costs of the public notification and will report the results at the public hearing.

FISCAL IMPACT: Franchise fees paid to the City will increase by approximately \$14,500.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

Prepared by Rebecca Areida, Management Analyst
FWS/RA/pmf
Attachment
cc: Central Valley Waste Services
Steve Mann, Information Systems Division Manager

APPROVED:

Blair King, City Manager

CITY OF LODI
MULTI-CART CURBSIDE REFUSE RATES
EFFECTIVE October 8, 2009 THROUGH MARCH 31, 2010

	Current Rate Per Month	New Rate Per Month
<u>1. 35 GALLON REFUSE CART 1X PER WEEK</u>		
1 Refuse Cart	\$ 21.94	\$ 22.59
2 Refuse Carts	\$ 54.80	\$ 56.41
3 Refuse Carts	\$ 87.69	\$ 90.27
4 Refuse Carts	\$ 120.60	\$ 124.15
<u>2. 64 GALLON REFUSE CART 1X PER WEEK</u>		
1 Refuse Cart	\$ 32.99	\$ 33.96
2 Refuse Carts	\$ 82.44	\$ 84.87
3 Refuse Carts	\$ 131.89	\$ 135.78
<u>3. 96 GALLON WASTE CART 1X PER WEEK</u>		
1 Refuse Cart	\$ 71.93	\$ 74.05
2 Refuse Carts	\$ 143.87	\$ 148.11
3 Refuse Carts	\$ 215.80	\$ 222.16
<u>4. DUPLEX AND MULTI-FAMILY, AND MOBILE HOMES</u>		
Monthly rate is reduced one (1) dollar from above	\$ (1.00)	\$ (1.00)
<u>5. LOW VOLUME USER 1X PER WEEK****</u>		
One (1) - 20 Gallon Low Volume Refuse Cart	\$ 14.92	\$ 15.36
<u>6. LOW INCOME USER 1X PER WEEK****</u>		
20 Gallon Refuse Cart	\$ 9.51	\$ 9.79
35 Gallon Refuse Cart	\$ 11.88	\$ 12.23
<u>7. ADDITIONAL 64 GALLON RECYCLING CARTS</u>		
Second and Third Recycling Cart	No Add'l Charge	No Add'l Charge
Fourth and Each Additional Cart	\$ 11.83	\$ 12.17
<u>8. ADDITIONAL 96 GALLON YARD AND GARDEN CARTS</u>		
Second and Third Yard and Garden Cart	No Add'l Charge	No Add'l Charge
Fourth and Each Additional Yard and Garden Car	\$ 11.83	\$ 12.17
<u>9. BACK YARD SERVICE****</u>		
Monthly service charge	\$ 12.14	\$ 12.50
Qualified Disabled	No Add'l Charge	No Add'l Charge

Notes:

****Applies to Single Family Dwellings Only

CITY OF LODI
CONTAINER RATES
EFFECTIVE APRIL 1, 2009 THROUGH MARCH 31, 2010

WEEKLY SERVICE - ONE (1) CUBIC YARD CONTAINER

# OF CONTAINERS	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
1	\$ 118.02	\$ 219.58	\$ 503.12	\$ 907.98	\$ 1,434.19	\$ 2,081.71
2	\$ 187.52	\$ 342.12	\$ 715.07	\$ 1,233.65	\$ 1,897.82	\$ 2,707.55
3	\$ 257.00	\$ 464.63	\$ 927.03	\$ 1,559.32	\$ 2,361.41	\$ 3,333.37
4	\$ 326.47	\$ 587.15	\$ 1,138.98	\$ 1,884.93	\$ 2,825.01	\$ 3,959.24
5	\$ 395.98	\$ 709.66	\$ 1,350.93	\$ 2,210.62	\$ 3,288.65	\$ 4,585.06
6	\$ 465.47	\$ 832.18	\$ 1,562.88	\$ 2,536.28	\$ 3,752.24	\$ 5,210.89
7	\$ 534.95	\$ 954.73	\$ 1,774.85	\$ 2,861.92	\$ 4,215.87	\$ 5,836.74
8	\$ 604.42	\$ 1,077.23	\$ 1,986.82	\$ 3,187.53	\$ 4,679.46	\$ 6,462.59
9	\$ 673.92	\$ 1,199.78	\$ 2,198.76	\$ 3,513.21	\$ 5,143.10	\$ 7,088.42
10	\$ 743.43	\$ 1,322.29	\$ 2,410.71	\$ 3,838.86	\$ 5,606.70	\$ 7,714.23

WEEKLY SERVICE - TWO (2) CUBIC YARD CONTAINER

# OF CONTAINERS	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
1	\$ 171.97	\$ 324.13	\$ 670.74	\$ 1,146.94	\$ 1,752.77	\$ 2,488.20
2	\$ 292.04	\$ 544.60	\$ 1,030.39	\$ 1,671.78	\$ 2,468.66	\$ 3,421.12
3	\$ 412.15	\$ 765.03	\$ 1,390.13	\$ 2,196.62	\$ 3,184.57	\$ 4,354.02
4	\$ 532.21	\$ 985.51	\$ 1,749.78	\$ 2,721.44	\$ 3,900.50	\$ 5,286.93
5	\$ 652.34	\$ 1,205.90	\$ 2,109.46	\$ 3,246.29	\$ 4,616.39	\$ 6,219.83
6	\$ 772.43	\$ 1,426.39	\$ 2,469.09	\$ 3,771.12	\$ 5,332.32	\$ 7,152.74
7	\$ 892.55	\$ 1,646.83	\$ 2,828.82	\$ 4,295.95	\$ 6,048.21	\$ 8,085.62
8	\$ 1,012.62	\$ 1,867.29	\$ 3,188.51	\$ 4,820.77	\$ 6,764.12	\$ 9,018.53
9	\$ 1,132.74	\$ 2,087.74	\$ 3,548.17	\$ 5,345.61	\$ 7,479.22	\$ 9,951.43
10	\$ 1,252.83	\$ 2,308.16	\$ 3,907.85	\$ 5,870.43	\$ 8,197.16	\$ 10,884.33

WEEKLY SERVICE - THREE (3) CUBIC YARD CONTAINER

# OF CONTAINERS	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
1	\$ 218.93	\$ 414.82	\$ 805.10	\$ 1,325.00	\$ 1,974.51	\$ 2,753.64
2	\$ 386.01	\$ 725.93	\$ 1,299.16	\$ 2,027.88	\$ 2,912.16	\$ 3,952.00
3	\$ 553.09	\$ 1,037.07	\$ 1,793.20	\$ 2,730.80	\$ 3,849.82	\$ 5,150.34
4	\$ 720.14	\$ 1,348.16	\$ 2,287.22	\$ 3,433.67	\$ 4,787.50	\$ 6,348.70
5	\$ 887.23	\$ 1,659.30	\$ 2,781.29	\$ 4,136.60	\$ 5,725.21	\$ 7,547.05
6	\$ 1,054.33	\$ 1,970.39	\$ 3,275.32	\$ 4,839.47	\$ 6,662.83	\$ 8,745.40
7	\$ 1,221.38	\$ 2,281.14	\$ 3,769.38	\$ 5,542.36	\$ 7,600.47	\$ 9,943.77
8	\$ 1,388.45	\$ 2,592.62	\$ 4,263.42	\$ 6,245.26	\$ 8,538.17	\$ 11,142.12
9	\$ 1,555.53	\$ 2,903.77	\$ 4,757.49	\$ 6,948.14	\$ 9,475.81	\$ 12,340.47
10	\$ 1,722.61	\$ 3,214.88	\$ 5,251.51	\$ 7,651.04	\$ 10,413.45	\$ 13,538.79

CITY OF LODI
CONTAINER RATES
EFFECTIVE APRIL 1, 2009 THROUGH MARCH 31, 2010

WEEKLY SERVICE - FOUR (4) CUBIC YARD CONTAINER

# OF CONTAINERS	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
1	\$ 265.93	\$ 505.49	\$ 939.49	\$ 1,503.10	\$ 2,196.29	\$ 3,019.11
2	\$ 479.97	\$ 907.29	\$ 1,567.89	\$ 2,384.03	\$ 3,355.71	\$ 4,482.92
3	\$ 694.03	\$ 1,309.12	\$ 2,196.32	\$ 3,265.03	\$ 4,515.13	\$ 5,946.74
4	\$ 908.10	\$ 1,710.92	\$ 2,824.75	\$ 4,146.00	\$ 5,674.58	\$ 7,410.52
5	\$ 1,122.15	\$ 2,112.70	\$ 3,453.17	\$ 5,026.94	\$ 6,834.02	\$ 8,874.36
6	\$ 1,336.23	\$ 2,514.51	\$ 4,081.60	\$ 5,907.91	\$ 7,993.41	\$ 10,338.15
7	\$ 1,550.32	\$ 2,916.34	\$ 4,710.04	\$ 6,788.88	\$ 9,152.83	\$ 11,801.97
8	\$ 1,764.40	\$ 3,318.13	\$ 5,338.44	\$ 7,669.82	\$ 10,312.27	\$ 13,265.78
9	\$ 1,978.44	\$ 3,719.94	\$ 5,966.86	\$ 8,550.80	\$ 11,471.72	\$ 14,729.59
10	\$ 2,192.54	\$ 4,121.74	\$ 6,595.27	\$ 9,431.74	\$ 12,631.14	\$ 16,193.41

WEEKLY SERVICE - FIVE (5) CUBIC YARD CONTAINER

# OF CONTAINERS	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
1	\$ 312.91	\$ 596.19	\$ 1,073.87	\$ 1,681.14	\$ 2,418.06	\$ 3,284.55
2	\$ 573.96	\$ 1,088.64	\$ 1,836.69	\$ 2,740.20	\$ 3,799.23	\$ 5,013.80
3	\$ 834.99	\$ 1,581.14	\$ 2,599.47	\$ 3,799.21	\$ 5,180.44	\$ 6,743.12
4	\$ 1,096.06	\$ 2,073.64	\$ 3,362.27	\$ 4,858.26	\$ 6,561.62	\$ 8,472.40
5	\$ 1,357.15	\$ 2,566.14	\$ 4,125.04	\$ 5,917.30	\$ 7,942.80	\$ 10,201.67
6	\$ 1,618.16	\$ 3,058.61	\$ 4,887.87	\$ 6,976.32	\$ 9,324.02	\$ 11,930.91
7	\$ 1,879.27	\$ 3,551.08	\$ 5,650.66	\$ 8,035.38	\$ 10,705.21	\$ 13,660.17
8	\$ 2,140.30	\$ 4,043.57	\$ 6,413.47	\$ 9,094.41	\$ 12,086.38	\$ 15,389.46
9	\$ 2,401.38	\$ 4,536.08	\$ 7,176.25	\$ 10,153.44	\$ 13,467.59	\$ 17,118.73
10	\$ 2,662.42	\$ 5,028.57	\$ 7,939.06	\$ 11,212.47	\$ 14,848.75	\$ 18,848.00

WEEKLY SERVICE - SIX (6) CUBIC YARD CONTAINER

# OF CONTAINERS	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
1	\$ 359.86	\$ 686.84	\$ 1,208.25	\$ 1,859.21	\$ 2,639.82	\$ 3,550.04
2	\$ 667.91	\$ 1,270.01	\$ 2,105.40	\$ 3,096.32	\$ 4,242.77	\$ 5,544.72
3	\$ 975.95	\$ 1,853.15	\$ 3,002.59	\$ 4,333.41	\$ 5,845.68	\$ 7,539.48
4	\$ 1,283.99	\$ 2,436.32	\$ 3,899.71	\$ 5,570.50	\$ 7,448.66	\$ 9,534.17
5	\$ 1,592.03	\$ 3,019.45	\$ 4,796.89	\$ 6,807.59	\$ 9,051.59	\$ 11,528.89
6	\$ 1,900.04	\$ 3,602.66	\$ 5,694.07	\$ 8,044.70	\$ 10,654.53	\$ 13,523.62
7	\$ 2,208.08	\$ 4,185.82	\$ 6,591.21	\$ 9,281.78	\$ 12,257.49	\$ 15,518.33
8	\$ 2,516.11	\$ 4,768.98	\$ 7,488.39	\$ 10,518.88	\$ 13,860.41	\$ 17,513.03
9	\$ 2,824.15	\$ 5,352.11	\$ 8,385.57	\$ 11,755.99	\$ 15,463.38	\$ 19,507.76
10	\$ 3,132.23	\$ 5,935.27	\$ 9,282.72	\$ 12,993.06	\$ 17,066.31	\$ 21,502.50

CITY OF LODI
10 TO 50 CUBIC YARD CONTAINERS
RATE STRUCTURE

EFFECTIVE APRIL 1, 2009 THROUGH MARCH 31, 2010

	CURRENT RATES	NEW RATES
<u>PERMANENT HIGH FREQUENCY ROLL-OFF RATES</u>		
1. Drop-off and Pick-up Charge Per Box	\$ 152.09	\$ 156.57
2. Weighed Tons Disposed/Box X Processing Charge	\$ 34.25	\$ 35.26
3. Franchise Fee (4.8% of 1+2)	\$ -	\$ -
TOTAL BILL (1+2+3)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	

<u>ONE-TIME TEMPORARY USER ROLL-OFF RATES</u>		
1. Drop/off/Pick-up Charge Per Box	\$ 193.01	\$ 198.70
2. Tons Disposed/Box X Processing Charge (Average of five (5) tons charged per Box)	\$ 34.25	\$ 35.26
3. Franchise Fee (4.8% of 1+2)	\$ -	\$ -
TOTAL BILL (1+2+3)	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>	

CITY OF LODI
10 TO 50 CUBIC YARD ROLL OFF* CONTAINERS
COMPACTOR RATE STRUCTURE
EFFECTIVE APRIL 1, 2009 THROUGH MARCH 31, 2010

	CURRENT RATES	NEW RATES
TEMPORARY OR PERMANENT COMMERCIAL COMPACTOR RATES		
1. Drop/off/Pick-up Charge Per Box	\$ 258.63	\$ 266.25
2. Tons Disposed/Box X Processing Charge	\$ 34.25	\$ 35.26
3. Franchise Fee (4.8% of 1+2)	\$ -	\$ -
TOTAL BILL (1+2+3)	<div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 auto;"></div>	

* This charge will be applied to loads that are serviced by "Roll Off" vehicles.

* This charge will be applied per load to self contained compaction containers or containers that attach to a charging unit for the purpose of compaction in sizes on or about 10 to 50 cubic

Comments by the public on non-agenda items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Comments by the City Council Members on non-agenda items



CITY OF LODI COUNCIL COMMUNICATION

AGENDA ITEM J-02a

AGENDA TITLE: Appointment to Library Board of Trustees and Re-Post for Vacancies on Lodi Animal Advisory Commission and Lodi Budget/Finance Committee

MEETING DATE: August 19, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Concur with the Mayor's appointment to the Library Board of Trustees and further direct the City Clerk to re-post for vacancies on the Lodi Animal Advisory Commission and Lodi Budget/Finance Committee.

BACKGROUND INFORMATION: At the July 15, 2009, City Council meeting, Council directed the City Clerk to post for the vacancy on the Library Board of Trustees. The Mayor has reviewed the applications and made his selection below. Additionally, Council directed the Clerk to re-post for the remaining vacancies on the Lodi Animal Advisory Commission and the Lodi Budget/Finance Committee. Due to the fact that once again no applications were received during this second application period, it is recommended that the vacancies be posted once again to remain open until filled.

APPOINTMENT:

Library Board of Trustees

Claudia Maria Veiez Term to expire June 30, 2012

POSTING:

Lodi Animal Advisory Commission

One Vacancy Term to expire December 31, 2010

Lodi Budget/Finance Committee

One Vacancy Term to expire June 30, 2013

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Consider Impact of State Adopted Budget and Amend Budget Via Resolution As Needed In Response to Proposition 1A Property Tax 'Borrowing'

MEETING DATE: August 19, 2009

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Consider impact of State adopted budget and amend budget via resolution as needed in response to the Proposition 1A Property Tax 'borrowing'.

BACKGROUND INFORMATION: The State of California adopted budget for fiscal year 2009-10 included a number of provisions that affected local government agencies. The most significant financial provision affecting local agencies is the forced "loan" of property tax collections of approximately \$1.9 billion statewide, representing 8 percent of the property tax collections of local agencies, to the State under Proposition 1A.

Proposition 1A 'Loan'

The most significant impact for the City of Lodi is the forced 'loan' of property tax dollars to the State under Proposition 1A. The enabling legislation instructs county auditors to shift 8 percent of each local government's share of property taxes to a special fund. The legislation also allows for a 'hardship exemption', which, if granted, would increase the amount 'borrowed' from the remaining entities within that county. Absent any hardships, it is estimated that this 'loan' will remove about \$1.2 million from the General Fund¹. Actual amount of the 'loan' is not known at this time, but is not expected to exceed \$1.5 million. 'Borrowed' funds are to be repaid by the state, with interest, by June 30, 2013.

Staff believes it is prudent to act quickly to address this revenue loss. Options to consider include:

- Reducing revenues and expenditures by \$1.2 million in the General Fund;
- Participating in the 'securitization' of the 'loan' through the California Communities financing;
- Loaning funds from the Electric Utility to the General Fund;
- Loaning funds from PCE Settlement Funds to the General Fund; or
- A combination of the above options.

Reducing revenues and expenditures

As you are aware, the City recently adopted a balanced budget that included significant expenditure reductions combined with substantial contributions from employee groups. Additional reductions cannot be made to base expenditures without elimination of programs and staff layoffs. If the Council wishes to reduce expenditures in the General Fund, the following is a list of possible reductions to generate a savings of about \$1.2 million.

¹ City of Lodi Fiscal Year 2009-10 property tax budget is \$8,475,000; California Local Government Finance Almanac estimates \$1.2 million property tax reduction for the City of Lodi.

APPROVED: _____
Blair King, City Manager

Department	Program/Function	# of Positions	Savings
Police	Eliminate one-half of Code Enforcement (2 positions)	2	\$198,000
	Eliminate 2 officer positions	2	\$175,000
Fire	Eliminate 3 firefighter positions	3	\$250,000
Internal Services	Eliminate the Purchasing function (3 positions)	3	\$210,000
Parks	Eliminate vacant maintenance position	1	\$63,000
Economic Development	Reduce Community Events line item		\$20,000
Non Departmental	Reduce Utility expenses		\$42,500
Administration	Eliminate Protocol Account funding		\$12,500
Contributions To:			
Library	Eliminate 1 position or funding for part-time staff	1	\$50,000
Community Development	Reduce various Service and Supply line items		\$5,000
Community Center	Reduce funding for part-time staff		\$35,000
Recreation	Reduce funding for part-time staff		\$15,000
Streets	Eliminate two Streets Maintenance Worker positions	2	\$130,000
All General Fund Departments	Eliminate all cell phones in the General Fund		\$56,000
Totals		14	\$1,262,000

Funding for positions reflects a savings for ten months of the fiscal year.

The primary advantage of this option is that the City would be operating within the current year revenue stream. Disadvantages of this option include laying off up to 14 employees, significantly impacting Code Enforcement and Law Enforcement services, significantly hampering Fire Protection services, eliminating the central purchasing function of the City, and reducing staffing in a variety of other programs and functions.

Securitization of the 'loan' through California Communities

As part of the State budget package, local governments have the opportunity to receive the monies being 'borrowed' by the State upfront through a securitization financing offered by California Communities, a joint powers authority sponsored by the League of California Cities and California State Association of Counties. California Communities will issue bonds securitizing the future payments by the State and remit the proceeds of the bonds to the local governments who opt to participate in the securitization. This securitization program is intended to replace 100 percent of the funds 'loaned' by local agencies to the state. The State will repay the bondholders by paying off the outstanding bonds, including interest costs. The state will also pay the costs of issuance of bonds under the California Communities program. Structure, timing and application details of this program are currently being determined, however, it is expected that funds would be made available to local agencies by the end of November.

If a city bonds against the Prop 1A loan, the State will pay interest costs on the bonds up to 8 percent. If a city decides not to bond against the Prop 1A loan, the state will pay the city interest at a rate greater than that of the Pooled Money Investment Account (PMIA) rate, but not to exceed 6 percent. The State Controller will announce the interest rate no later than September 28.

The primary advantage of this option is that the City receives its funds timely and can continue operations. No budgetary adjustments would be necessary. The primary disadvantage of this option relates to the unknowns surrounding the California Communities bond issue. At this writing, it is not known how many entities will participate in this program. Participation rates will determine the size of the bond issue and may also affect the interest rate payable on the underlying bonds. It is also unknown how the capital markets will respond to this issue given that the security for the bonds is the State's promise to repay in three years.

Loan from Electric Utility to General Fund

The City could have the General Fund borrow some, or all, of the 'loaned' amount from the Electric Utility Fund. Such a borrowing is within the purview of the Council. If this option were chosen, staff would recommend that the interest payment from the state be posted to the Electric Utility to the extent that it is equal to the rate of return on the City treasury pool (FY 2008-09 pool rate was 2.11% while the PMIA rate at August 10, 2009 was 0.91%). In the event the state interest payment exceeds the rate of return on the City treasury pool, staff would recommend that such excess funds be posted to the General Fund.

Prudent management of Electric Utility cash balances and Retained Earnings provides the City with significant flexibility to address the General Fund revenue shortfall caused by the State 'borrowing' of funds. The Council adopted a policy regarding Electric Utility reserves in January 2007 that essentially set the minimum reserve level at \$12.9 million. Estimated cash reserves for the Electric Utility at June 30, 2009 are expected to be about \$11.6 million. Using a portion of the reserves as a loan to the General Fund will not materially affect the operations of the Electric Utility.

Advantages of this option include the ability to continue General Fund operations without reduction of programs or staff. Additionally, this option provides the ability for the City to generate additional interest income as the interest rate established by the Controller will exceed the PMIA rate that the City currently receives on invested cash balances. Finally, this option eliminates the uncertainties associated with the securitization option discussed above. The primary disadvantage of this option is if the State defaults on its promise to repay the 'loan', thereby leaving the General Fund with an outstanding loan.

Loan from PCE Settlement Funds to the General Fund

Similar to the above scenario, the City has funds available in the PCE Settlement account that could be loaned to the General Fund to cover some, or all, of the property tax 'loan'. The PCE Settlement fund has approximately \$16 million available and expects to spend down about \$2 million during the next three years. As such, this fund has about \$14 million available; a portion of which could be loaned to the General Fund to offset the revenue loss.

If this option were chosen, staff would recommend that interest income from the state be apportioned as discussed above under the Electric Utility loan. This option carries the same advantages and disadvantages as the Electric Utility loan option.

Staff recommends that Council approve an internal loan between the General Fund and other city funds in an amount not to exceed \$1.5 million.

FISCAL IMPACT: The City expects to lose about \$1.2 million due to the Proposition 1A 'loan'. Approval of a loan between the General Fund and other city funds will mitigate this revenue loss and allow General Fund operations to continue without loss of programs or staff.

FUNDING AVAILABLE: Cash balances in Electric Utility.

Jordan Ayers
Deputy City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AMENDING THE CITY OF
LODI FINANCIAL PLAN AND BUDGET FOR THE FISCAL YEAR
BEGINNING JULY 1, 2009 AND ENDING JUNE 30, 2010 AUTHORIZING
THE CITY MANAGER TO EXECUTE A LOAN TO THE GENERAL FUND
FROM OTHER CITY FUNDS FOR THE ACTUAL AMOUNT OF THE
PROPOSITION 1A LOAN TO THE STATE

=====

WHEREAS, the City Council adopted the Fiscal Year 2009-10 Financial Plan and Budget on June 10, 2009 by Resolution 2009-76; and

WHEREAS, the State of California adopted its Fiscal Year 2009-10 budget on July 28, 2009; and

WHEREAS, provisions in the State adopted budget call for a forced 'loan' of approximately \$1.9 billion of property tax collections from local agencies to the State; and

WHEREAS, the City of Lodi share of the forced 'loan' is estimated to be about \$1.2 million, but could be higher; and

WHEREAS, the City Council has considered the impact of a loss of up to \$1.5 million on the City General Fund; and

WHEREAS, the City Council has determined that it must act quickly to mitigate the loss of funds and preserve services to the residents of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager to execute a loan to the General Fund from other city funds for the actual amount of the Proposition 1A loan to the State under the following principal business points:

- Loan amount shall be for the actual amount of the Proposition 1A loan to the State and shall not exceed \$1.5 million;
- Repayment to be coterminous with receipt of payment, or payments, from the State under the terms of the Proposition 1A 'loan' authorized in the state budget for 2009-10, however, term shall not extend beyond June 30, 2013;
- Interest to be paid to loaning fund at the rate that loaned funds would have earned in the City treasury pool;
- Interest received from the State in excess of the City treasury pool rate to be deposited to the General Fund.

Dated: August 19, 2009

=====

I hereby certify that Resolution No. 2009-_____ as passed and adopted by the City Council of the City of Lodi in a regular meeting held August 19, 2009, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA ITEM K-02

AGENDA TITLE: Approve Downtown Lodi Business Partnership 2009-2010 Annual Report, Adopt Resolution of Intention to Levy Annual Assessment, and Set a Public Hearing for September 2, 2009, to Consider the Proposed Assessment

MEETING DATE: August 19, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the Downtown Lodi Business Partnership (DLBP) 2009-10 Annual Report, adopt a Resolution of Intention to levy the annual assessment, and set a public hearing for September 2, 2009, to consider the proposed assessment.

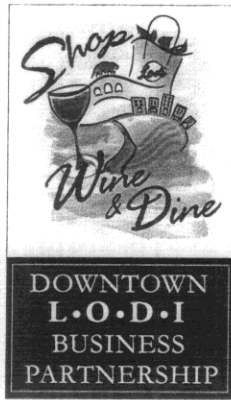
BACKGROUND INFORMATION: Pursuant to Lodi Municipal Code Chapter 12.06 and Streets and Highways Code Section 36500 et seq., the DLBP membership board is required to present an annual report for City Council review and approval prior to September 1. This must be done prior to the public hearing and adoption of a resolution confirming the 2009-10 Annual Report and levy of assessment. On July 27, 2009, the City received a request from DLBP to place the annual report on the August 19 Council agenda. On August 10, 2009, the City was provided with a draft report (attached) for Council consideration with a notation that the final report would be provided to the Council at the August 19, 2009, meeting.

Streets and Highways Code Section 36533 provides that a Business Improvement District (BID) must file an annual report which shall include proposed assessments, budget, general descriptions of the proposed improvements and activities, description of the area served, and any declaration of intent to change boundaries of the parking and business improvement area or in any benefit zone within the area if changes are being proposed. Due to the timing of when the report was received, staff has not reviewed the report for this information.

FISCAL IMPACT: The City does not charge the DLBP a fee to collect and distribute the assessment. On the other hand, the Lodi Tourism Business Assessment District is charged a 5% collection fee.

Blair King
City Manager

APPROVED: _____
Blair King, City Manager



RECEIVED
2009 AUG 10 AM 10:41

CITY CLERK
CITY OF LODI

August 10, 2009

Mr. Blair King, City Manager
City of Lodi
221 W. Pine Street
Lodi, CA 95240

Re: Annual Report 2009

Dear Blair:

Section 11.0 of the City Ordinance Number 1654, establishing the Downtown Lodi Business Improvement Area, requires that we submit to you by September of each year our annual report and budget.

In addition, the State of California Streets and Highways code, which is the enabling legislation, also specifies that certain additional information be provided. You will find all of the required information contained in our report.

We have provided you with eight copies, five for the City Council, one for the City Clerk, one for City Attorney and one for yourself.

Thank you for your continued support.

Sincerely,

Jaime Watts, Executive Director
Downtown Lodi Business Partnership

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2038309
ENDORSED
FILED

In the office of the Secretary of
of the State of California

MAR 31 1998

Bill Jones
BILL JONES, Secretary of State

ARTICLES OF INCORPORATION OF
DOWNTOWN LODI BUSINESS PARTNERSHIP
A California Nonprofit Mutual Benefit Corporation

One: The name of the corporation is Downtown Lodi Business Partnership (A California Nonprofit Mutual Benefit Corporation).

Two: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

Such purposes for which this corporation is formed are to promote and improve the downtown Lodi business area, to generally improve business conditions in the downtown area, and to generally enhance the downtown area of the City of Lodi. Notwithstanding any other provision of these articles, this corporation shall not engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

Three: The name and address of the corporation's initial agent for service of process is Ronald M. Beckman, Esq., 111 N. Church Street, Lodi, California, 95240.

Four: The right to determine the consideration for which memberships will be issued shall be vested in the Regular Members, to be determined by a majority vote of the Regular Members in good standing.

Five: No part of the net earnings of the corporation shall inure to the benefit of any member or private shareholder, as defined for purposes of Section 501 (c) (6) of the Internal Revenue Code of 1954.

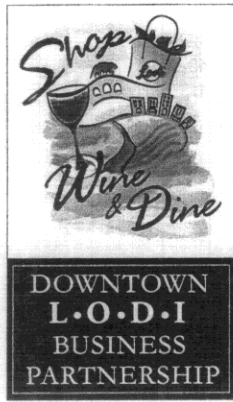
Dated: March 31, 1998

Ronald M. Beckman

Ronald M. Beckman, Incorporator

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2009 ANNUAL REPORT

Items listed below refer to Section 36533(b) of the California Streets and Highway Code:

No changes in boundaries of benefit zones within the area are proposed.

No physical improvements are planned.

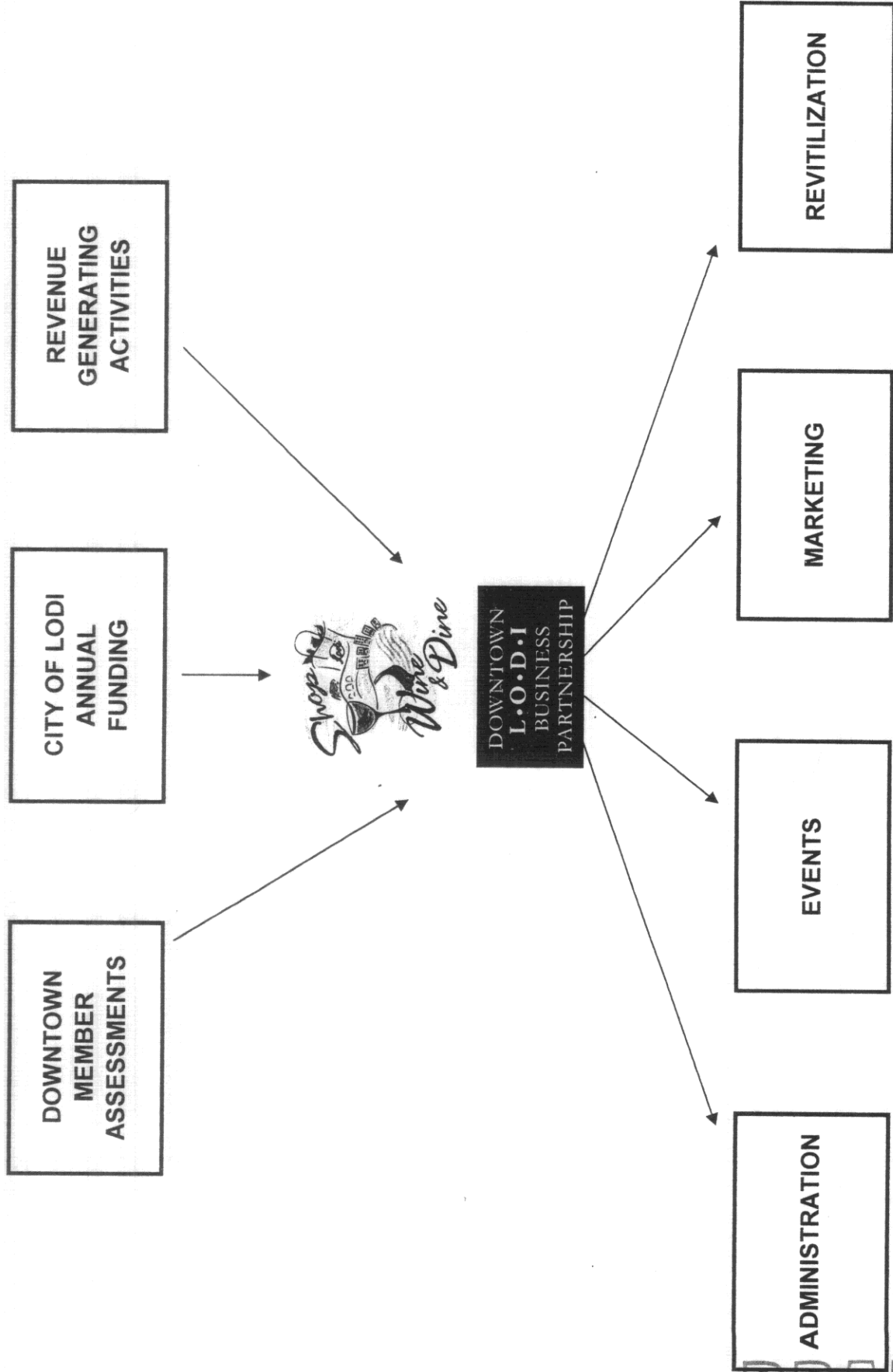
Budget for the 2009 calendar year is enclosed.

The budget details all sources of income and projected expenses.

A Benefit Fee Schedule and a Map of the Business Improvement Area are enclosed.

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Downtown Lodi Business Partnership Overview



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Downtown Lodi Business Partnership

Proposed Budget

January 1, 2009 through December 31, 2009

Income

Assessment Fees	38000.00
City of Lodi	31950.00
Event Revenue	
Farmers Market	55000.00
Parade of Lights	15000.00
Street Banner Program	3000.00
Grape Festival Youth Parade	1000.00
Community Trick-or-Treat & Fall Fest	300.00
Winterfest	2500.00
Miscellaneous Events & Sales	<u>5000.00</u>
Total Income	151750.00

Expenses

Event Expenses	
Farmers Market	27000.00
Parade of Lights	3000.00
Street Banner Program	600.00
Grape Festival Youth Parade	700.00
Community Trick-or-Treat & Fall Fest	500.00
Winterfest	2500.00
Miscellaneous Events & Sales	1000.00
Marketing Expenses	
Advertising, Marketing & Promotions	4000.00
Travel	1800.00
Public Relations	1000.00
Seminars & Conferences	1500.00
Website	2000.00
Membership Expenses	
Newsletters	600.00
Quarterly Mixers	250.00
Plaques & Trophies	400.00
Sunshine Committee	500.00
Revitalization Expenses	
Downtown Beautification	5000.00
Kiosk Maintenance	1500.00

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Administrative	
Director's Salary	47100.00
Staff Wages	12000.00
Payroll Taxes	5200.00
Contract Labor	500.00
Insurance	12000.00
Professional Fees	2700.00
Rent	4800.00
Storage	2000.00
Office Supplies	4000.00
Office Equipment	500.00
Bank & Merchant Fees	600.00
Postage	500.00
Utilities (phone, internet, etc.)	<u>6000.00</u>
Total Expenses	151750.00
Net Income	0.00

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08/09/09
Cash Basis

Downtown Lodi Business Partnership
Profit & Loss
January through December 2008

Jan - Dec 08

Ordinary Income/Expense	
Income	
City of Lodi Funds	35,000.00
Member Assessment Fees	41,190.00
Event Revenue	
Advertising & Promotion Revenue	2,855.00
Beverage Sales	25,749.90
Parade Entry Fees	6,515.00
Sponsorship	19,806.00
Vendor Fee	31,091.00
Other Income	4,290.00
Total Event Revenue	90,306.90
Total Income	166,496.90
Expense	
Reconciliation Discrepancies	-9.57
Administrative Expenses	
Licenses & Permits	20.00
Bank Service Charges	637.72
Contract Labor	1,107.50
Dues and Subscriptions	178.70
Insurance-D & O and State Fund	1,529.13
Insurance - Events Liability	5,722.32
Interest	300.22
Miscellaneous	-2,434.63
Office Maintenance & Repairs	689.49
Office Supplies	4,322.79
Payroll Expenses	
Director's Wages	47,649.77
Staff Wages	8,567.72
Payroll Taxes	5,390.38
Total Payroll Expenses	61,607.87
Penalties	220.00
Professional Fees	2,138.25
Rent	6,320.00
Security	130.55
Taxes	10.00
Utilities	5,196.14
Total Administrative Expenses	87,696.05
Event Expenses	
Advertising	11,972.40
Awards/Banners/Posters	3,281.54
Beverage Expense	23,449.03
Entertainment	8,312.90
Equipment Rental	1,542.86
Labor/Repairs	8,968.72
License/Permits/Inspection	1,957.61
Mileage & Meetings	43.51
Other Expense	0.00
Postage & Delivery	438.40
Marketing / Promotions	851.09
Sanitation	2,074.26
Supplies	3,338.73
Total Event Expenses	66,231.05
Marketing Expenses	
Advertising & Promotions	4,615.50
Mileage & Meetings	803.74
Public Realtions	85.00

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08/09/09
Cash Basis

Downtown Lodi Business Partnership
Profit & Loss
January through December 2008

	Jan - Dec 08
Seminars & Marketing Campaigns	254.32
Total Marketing Expenses	5,758.56
Membership	
Labor/Repairs	60.00
Newsletter	110.00
Plaques & Trophies	75.04
Postage and Delivery	493.32
Quarterly Mixers	260.00
Sunshine Committee	614.50
Total Membership	1,612.86
Revitalization	
Kiosk Update	555.36
Map & Directory Brochures	1,740.00
Downtown Beautification	
Supplies	407.04
Labor/Repairs	710.00
Total Downtown Beautification	1,117.04
Total Revitalization	3,412.40
Total Expense	164,701.35
Net Ordinary Income	1,795.55
Other Income/Expense	
Other Income	
Insurance Proceeds Received	2,730.00
Interest Income	4.57
Total Other Income	2,734.57
Other Expense	
Casualty/Theft Loss	3,230.00
Total Other Expense	3,230.00
Net Other Income	-495.43
Net Income	1,300.12

08/09/09
Cash Basis

Downtown Lodi Business Partnership
Balance Sheet
As of December 31, 2008

	Dec 31, 08
ASSETS	
Current Assets	
Checking/Savings	
Farmers & Merchants Bank	-36.00
Savings Account	79.48
Petty Cash	92.24
Total Checking/Savings	135.72
Total Current Assets	135.72
Fixed Assets	
Accum Deprec-Equip	
Equipment	
Office Equipment 12/30/00	
Cost	2,962.63
Accumulated Depreciation	-2,962.63
Total Office Equipment 12/30/00	0.00
Office Equipment 06/01/02	
Cost	2,653.37
Accumulated Depreciation	-2,298.00
Total Office Equipment 06/01/02	355.37
PA System 07/16/2004	
Cost	1,156.12
Accumulated Depreciation	-794.00
Total PA System 07/16/2004	362.12
Cell Phone 08/10/07	
Cost	549.18
Accumulated Depreciatio	-110.00
Total Cell Phone 08/10/07	439.18
Total Equipment	1,156.67
Computer Equipment	
HP LaserJet36 Printer 04/18/08	
Cost	479.46
Total HP LaserJet36 Printer 04/18/08	479.46
Laser Printer 03/24/05	
Cost	700.89
Accumulated Depreciation	-499.00
Total Laser Printer 03/24/05	201.89
Total Computer Equipment	681.35
Computers 08/29/06	
Cost	3,753.97
Accumulated Depreciation	-1,952.00
Total Computers 08/29/06	1,801.97
Total Accum Deprec-Equip	3,639.99
Furniture & Fixtures	
Vehicles	
Trailer 07/31/05	
Cost	235.69
Accumulated Depreciation	-133.00
Total Trailer 07/31/05	102.69

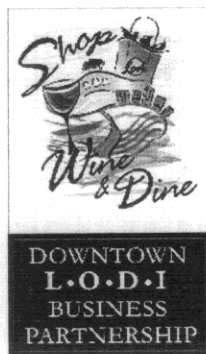
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08/09/09
Cash Basis

Downtown Lodi Business Partnership
Balance Sheet
As of December 31, 2008

	Dec 31, 08
Total Vehicles	102.69
Daniger Table & 8 Chairs5/25/06	
Cost	839.00
Accumulated Depreciation	-325.00
Total Daniger Table & 8 Chairs5/25/06	514.00
Refrigerator 06/02/08	
Cost	300.00
Total Refrigerator 06/02/08	300.00
Storage Shelving Unit 05/09/08	
Cost	247.82
Total Storage Shelving Unit 05/09/08	247.82
Wine Garden Furniture 07/29/04	
Cost	1,326.17
Accumulated Depreciation	-912.00
Total Wine Garden Furniture 07/29/04	414.17
Total Furniture & Fixtures	1,578.68
Total Fixed Assets	5,218.67
TOTAL ASSETS	5,354.39
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	-500.00
Total Accounts Payable	-500.00
Other Current Liabilities	
Payroll Liabilities	2,275.21
Employee Expense Reimbursement	-10.76
Total Other Current Liabilities	2,264.45
Total Current Liabilities	1,764.45
Total Liabilities	1,764.45
Equity	
Retained Earnings	2,289.82
Net Income	1,300.12
Total Equity	3,589.94
TOTAL LIABILITIES & EQUITY	5,354.39

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DOWNTOWN LODI BUSINESS PARTNERSHIP BENEFIT FEE SCHEDULE

BUSINESS TYPE	ZONE A	ZONE B
Retailers/Restaurants*	\$240 (1-3 Employees)	\$120
	\$360 (4-6 Employees)	\$180
	\$480 (7+ Employees)	\$240
Service Businesses	\$180	\$90
Professional Businesses	\$120	\$60
Financial Institutions	\$600	\$600

**Note: Retail and restaurant businesses are assessed based on the number of employees - either full-time, or the equivalent made up of multiple employees.*

BUSINESS TYPE DEFINITIONS:

Retail and Restaurant – Businesses that buy and resell goods. Examples would be clothing stores, shoe stores, office supplies, as well as businesses that sell prepared food and drinks.

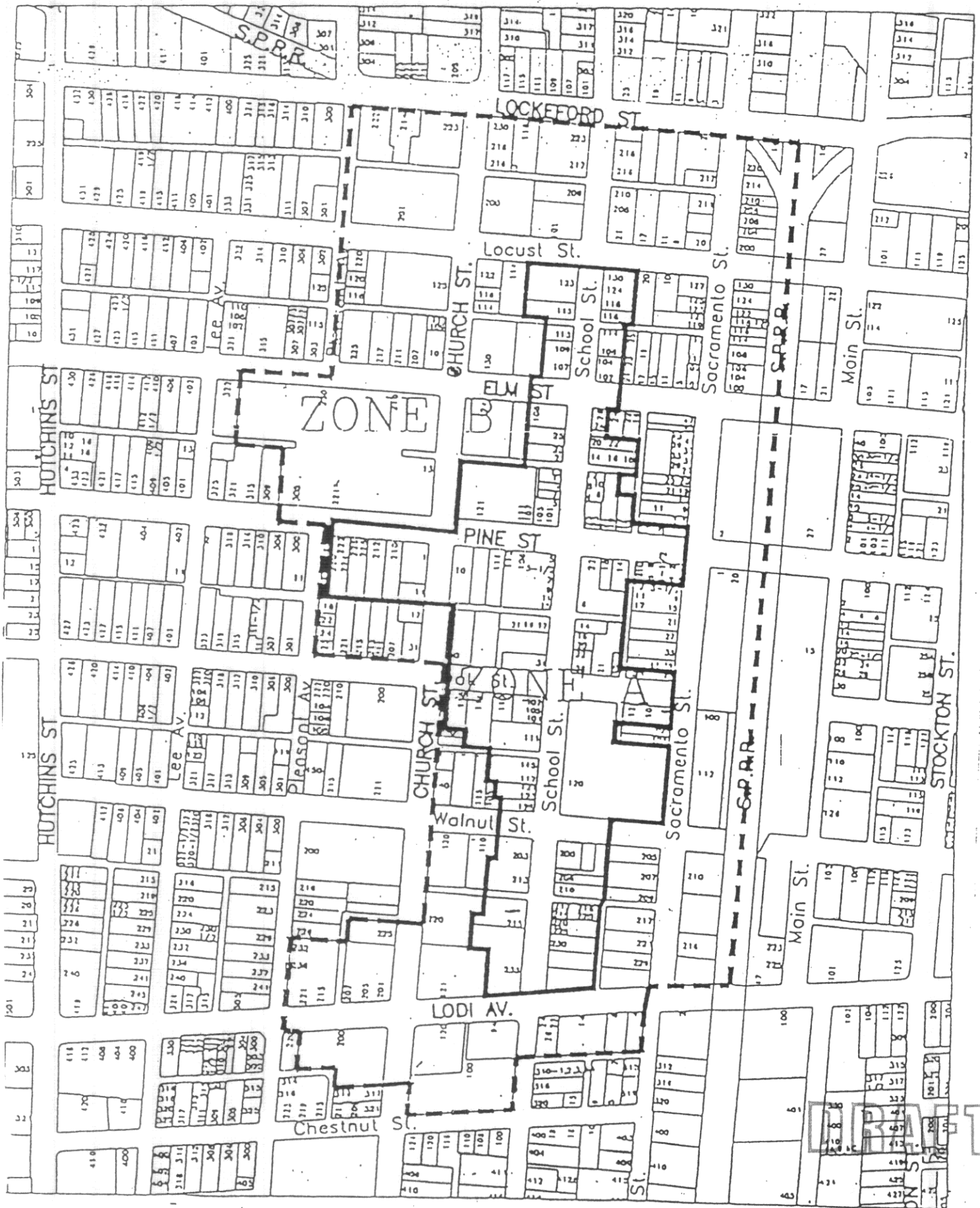
Service Businesses – Businesses that sell services. Examples are beauty and barber shops, repair shops, lodging, most automotive-oriented businesses, entertainment businesses such as theaters, etc.

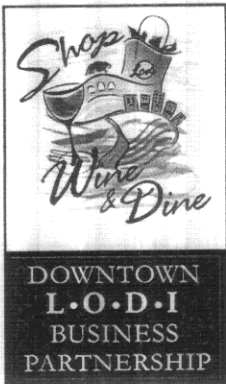
Professional Businesses – Includes architects, engineers, attorneys, dentists, doctors, accountants, optometrists, realtors, insurance offices, mortgage brokers and most other businesses which require advanced or specialized licenses, and/or advanced academic degrees.

Financial Institutions – Includes banking and savings and loan institutions, as well as credit unions, etc.

Downtown Lodi Business Partnership
4 West Pine Street, Lodi, California 95240
209.369.8052 phone 209.369.8053 fax
www.downtownlodi.com

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A detailed Marketing Plan describing the below bullet points will be included in the final copy of the annual report submitted and presented at the council meeting on August 19, 2009

2008 Accomplishments

Brand Image Campaign

- New Logo
- Redesigned Website
- Revamped Brochure
- Developed and Installed New Kiosk Maps

Downtown Beautification

- New Street Light Banners
- Flower Planting of City Pots
- Co-funded Sidewalk Power Washing Project
- Downtown Holiday Decorations
 - 25' Tree in Post Office Plaza, Holiday Banners, Fresh Swags on Street Corners

Media Relations

- TV Spots on Good Day Sacramento and Channel 13 News
- Radio Spots on KJOY
- News Articles in Lodi News-Sentinel, Stockton Record, San Joaquin Magazine
- Network with the Media and Public Through Interactive Web Pages; Twitter, Facebook

Events To Drive Traffic To Downtown

- Downtown Lodi Certified Farmers Market
- Parade of Lights
- "Stuck in Lodi" Car Show
- Grape Festival Youth Parade
- Downtown Trick-or-Treat & Fall Festival
- Winterfest; Horse-drawn Carriage Rides, Photos with Santa
- Merchant Promotions and Window Decorating Contests

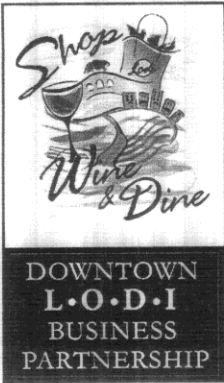
Community Outreach

- Represented Downtown on Committees for City-wide Activities
- Participated in Various Expos Outside of Lodi
- Coordinate and Promote School Field Trips and Safety Fairs

Member Benefits

- Quarterly Mixers
- Bi-Monthly Newsletter
- Lodi News-Sentinel Tab Insert
- Business Referral Database
- Business Directory and Link on Website
- Member Discounts on Marketing Programs

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A detailed Marketing Plan describing the below bullet points will be included in the final copy of the annual report submitted and presented at the council meeting on August 19, 2009

2009 Goals/Accomplishments

Develop Relationships with Downtown Property Owners

- Created a new web component that allows property owners to list their available downtown properties, contact information and photos.

Explore Additional Funding Sources

- Researching grants that apply to downtown development
- Joined the California Downtown Association (CDA)

Expand Current Programs

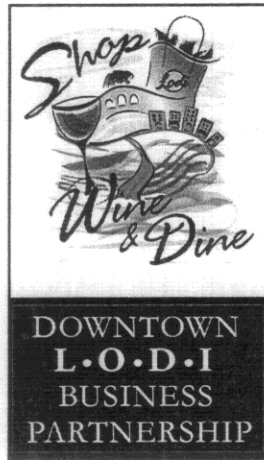
- Designed a marketing bundle package for members and non-members which includes: Annual Banner Attachment Program, Website Advertisement and Website Page with Link.

Enhance Existing Events

- Redesigned the layout of Farmers Market to include a wine garden featuring all four downtown wine tasting rooms and live entertainment on the North end of the market.

The Downtown Lodi Business Partnership is constantly exploring new ways to better promote and market downtown. We will be keeping council and staff updated on the progress and success of the organization.

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DOWNTOWN LODI BUSINESS PARTNERSHIP EVENTS

Farmers Market Overview

Downtown Lodi Business Partnership hosts The Downtown Certified Farmers Market. The family friendly market is held every Thursday evening beginning in June throughout the end of September.

Over 25 certified farmers offer an array of fresh produce and flowers. 50 homemade and commercial arts and craft vendors line the streets of downtown attracting over 5,000 attendees each week. An upscale beer garden which offers Lodi's local brew is located adjacent from the entertainment stage. The stage hosts live music performed by local bands, along with dance performances, comedy acts and competitions. A wine garden featuring downtown's wine tasting rooms accompanied by music.



The entertainment also includes theme nights such as Hawaiian, Mardi Gras, Country Western and Patriotic, where there are free giveaways, contests and family fun. The Food Court accompanies the market offering a wide variety of choices including hot dogs, BBQ, salads, Philippine cuisine, snow cones, smoothies and more. A Kids Zone invites kids of all ages to jump in bouncing houses, get their face painted and interact with clowns, balloon artists and animals. The Farmers Market is Lodi's summer signature event that has something for everyone!

New Developments and Future Plans for Farmers Market

- Contracted with UCP for clean-up on early Friday mornings during the Farmers Market season. The increased attendance of the market has caused a need for added clean-up. The DLBP and UCP is committed to making downtown look clean and attractive after the market and in perfect time for the weekend welcoming out-of-town visitors and our community.
- Added a Wine Garden which highlights all four downtown wine tasting rooms; cellardoor, Grands Amis, Benson Ferry and Dancing Fox. The Wine Garden is set up on the North end of the market to stimulate more activity and to offer a variety of atmospheres.
- Is providing a photograph and copy each week to the Lodi News Sentinel profiling a Farmers Market vendor. The editorial piece is published in every Thursday's newspaper which increases visibility of the event.

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Parade of Lights Overview

The Downtown Lodi Business Partnership presents the annual Parade of Lights – a magical holiday parade that illuminates the streets of downtown Lodi. The countless lights, floats, marching bands, dance groups and themed vehicles will entertain thousands of viewers on the first Thursday in December at 6:17 p.m. along the streets of downtown. The one mile route begins on Pine Street and continues down Church Street, Lodi Avenue, School Street and Locust.

A brilliantly lit horse-drawn carriage kicks off the festivities featuring the grand marshal. The spectacular parade concludes with holiday cheer from Santa Claus riding atop a Lodi fire truck.

Over 50,000 people of all ages line the streets of downtown. The Downtown Lodi Business Partnership invites all to be part of this signature event, Parade of Lights, which has become a cherished family tradition.



New Developments and Future Plans for Parade of Lights

- Working on creating even more exposure of the parade and encouraging tourism to Lodi by submitting event information and photos to a variety of publications and media in the Northern California region.

Grape Festival Youth Parade Overview

On the Saturday of the Grape Festival, the youth of Lodi parade the streets of downtown incorporating the theme of the event which takes place in September. Participants are given free entry into the Grape Festival the day of the parade, ribbons, goodie bags, snacks and the chance to win a trophy for win, place or show in various categories.

New Developments and Future Plans for Grape Festival Youth Parade

- To increase participation in the parade, over 10,000 applications were distributed to the elementary schools, churches and community service groups.
- To reduce costs, the DLBP is actively obtaining donations.



- Has developed a sponsorship package and is securing financial supporters increasing revenue to ensure the traditional event will persist.

- Scheduling walking vendors selling kettle corn, cotton candy, snow cones and more to create a more festive environment for the spectators.

- Is partnering with the Grape Festival to cross promote our events and to raise awareness of the event.

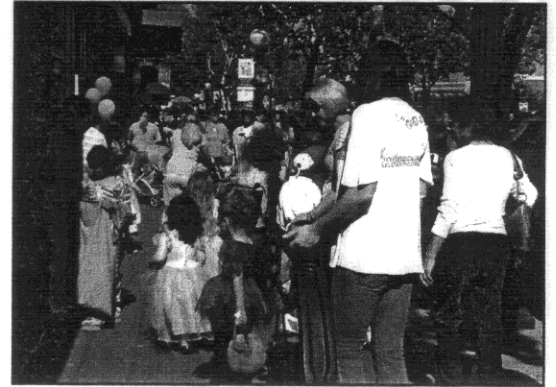
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Downtown Trick-or-Treat and Fall Festival Overview

The merchants downtown invite the community to trick-or-treat at their establishments on the Saturday before Halloween between 12 noon and 4 p.m. The Fall Festival has many family activities which include; live music, a food court, pumpkin painting, petting zoo, face painting and costume contests.

New Developments and Future Plans for Downtown Trick-or-Treat and Fall Festival

- Contacting local talent agencies, colleges and performing arts groups to find acts such as; stilt walking, unicycling and clowns to create a more of a carnival experience.
- Working with a church group to help put on traditional carnival games and contests.
- Contacting farmers to start a pumpkin contest; largest, strangest, etc.



Winterfest Overview

Downtown Lodi celebrates the holiday season throughout the month of December and decorates the streets with lights, a 25' Christmas tree, holiday banners and fresh swags assembled by local boyscouts on the street poles. On the first two Saturdays, a horse-drawn carriage offers rides for only \$1 per person and trots along the streets of downtown. The merchants downtown display their holiday spirit and compete for the best decorated window and lighted storefront.



New Developments and Future Plans for Winterfest

- Scheduling Christmas carolers to stroll the streets adding holiday ambiance.
- Encouraging merchants to host their holiday open houses on the scheduled Saturdays.
- Exploring the possibility of having homemade holiday craft vendors.

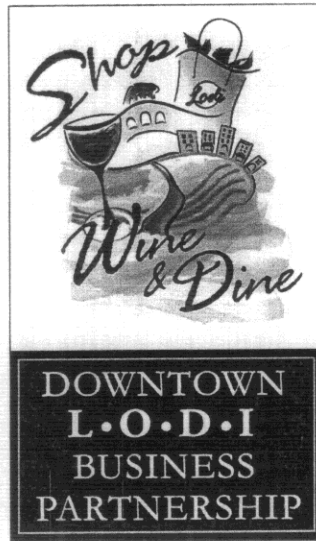
Annual "Stuck In Lodi" Car Show

The American Steel Car Club in conjunction with the DLBP hosts the annual "Stuck in Lodi" Car Show downtown in the month of August. Street rods and classic cars line the streets of downtown Lodi accompanied by a poker walk, live music, raffles, and awards.

Music in the Street

Downtown's newest event presented by Temple Baptist Church hosts a free concert on the Elm Street Starburst. The concert geared to the younger crowd on a Saturday night, provides a safe and entertaining evening.

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MISSION STATEMENT

The Downtown Lodi Business Partnership, comprised of business owners, professionals and merchants, is a non-profit association developed to encourage growth and prosperity in the Downtown Community of Lodi, and to maintain its economic health on an on-going basis.

This will be accomplished by:

- Encouraging development of new businesses, while retaining and revitalizing existing businesses
- Promoting retail activity by creating and maintaining a quality environment through coordinated advertising and downtown events
- Serving as an advocate for downtown businesses in dealing with local government, maintenance projects, the media and general public

4 West Pine Street, Lodi, Ca 95240
209.369.8052 phone 209.369.8053 fax
www.downtownlodi.com

DRAFT

RESOLUTION NO. 2009-_____

A RESOLUTION OF INTENTION TO LEVY ANNUAL ASSESSMENT
FOR DOWNTOWN LODI BUSINESS IMPROVEMENT AREA NO. 1,
ESTABLISHING PUBLIC HEARING DATE, AND APPROVING
ANNUAL REPORT

=====

WHEREAS, Downtown Lodi Business Improvement Area No. 1 was established December 17, 1997, by City Council adoption of ordinance 1654; and

WHEREAS, the annual report as required by Streets and Highways Code §536533 has been submitted to the Council by the Board of Directors of said improvement area.

NOW, THEREFORE, the City Council of the City of Lodi does hereby resolve, determine, and finds as follows:

1. Approves the Annual Report as submitted, said report being on file with the City Clerk.
2. Establishes September 2, 2009, in the City Council Chambers, Carnegie Forum, 305 West Pine Street, Lodi, California, at 7:00 p.m., or soon thereafter as possible, as the date, place, and time to hold the public hearing required by Streets and Highways Code §36534.
3. It is the intention of the City Council to levy and collect assessments within the parking and business improvement area for calendar year 2010 (the Area's fiscal year).
4. The boundaries of the entire area to be included in the Area and the boundaries of each separate benefit zone within the area set forth in a Map, Exhibit D, incorporated herein by reference. A true and correct copy of the map is on file with the City Clerk of the City of Lodi.
5. The types of improvements and activities proposed to be funded by the levy of assessments on businesses in the Area include marketing and promotional efforts; event coordination; and other activities with the goal to promote retail activities. A detailed description of activities is include in the Annual Report, Exhibit A, and incorporated by reference.
6. At the time of the public hearing, written and oral protests may be made. The form and manner of protests shall comply with Streets and Highways Code § 36524 and 36525.

Date: August 19, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the Lodi City Council in a regular meeting held August 19, 2009, by the following vote:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Report and Endorse a Proposed "Downtown Summit"

MEETING DATE: August 19, 2009

PREPARED BY: City Manager

RECOMMENDED ACTION: Receive report and endorse holding a one-day (five-hour) Downtown Summit to gather and rally Downtown property owners and merchants to review the progress of Downtown revitalization, assess current conditions, and look towards the future.

BACKGROUND INFORMATION: A little over a decade has passed since the City Council completed a series of capital improvements to revitalize the downtown core of Lodi. The effort to revitalize Downtown was guided in part by a series of documents including the 1994 *Central City Revitalization Program* prepared by Freedman, Tung & Bottomley; the 1997 *Downtown Development Standards & Guidelines*; and the *Market Opportunities and Strategies for the Enhancement of Lodi's Downtown and Industrial Base* prepared by Gruen Gruen & Associates.

The specific physical improvements included street reconstruction, new sidewalks, street lights, benches, kiosks, flower pots, trash receptacles, irrigation system, gateways, and landscaping. In general terms, approximately \$10 million was invested in Downtown.

Downtown remains a high priority for Lodi, and after a decade of the Downtown revitalization efforts, it is proposed that the downtown property owners, merchants, and stakeholders be brought together to review the progress, assess current conditions, and look to the future. Such an event is proposed as a Downtown Summit.

It is proposed that the event be a one-day (five-hour) event at Hutchins Street Square. We anticipate that Michael Freedman, the author and facilitator of the Central City Revitalization Program, be invited to critique the implementation and offer his thoughts on the future of the downtown.

To accommodate Mr. Freedman's schedule, the event is proposed to be held in the morning of Friday, October 16th. Invitations will be extended to merchants, property owners, Planning Commissioners, Downtown Lodi Business Partnership, Chamber of Commerce, and the Winegrape Commission.

The summit would be preceded by a survey of businesses, property owners, and visitors to Downtown.

APPROVED: _____
Blair King, City Manager

The event itself will consist of speakers, presentation, and breakout sessions. The desired outcome of the summit is the development of further goals and tasks for the continuation of the revitalization of Downtown. There is also value in conducting the event itself. It is expected that the event will be covered by media and will serve as justification to focus attention on Downtown.

It is assumed the event will cost up to \$10,000 and sponsors will help underwrite the cost. The amount of sponsorship will help to determine the event's size and scale.

FISCAL IMPACT: It is hoped that the event costs will be underwritten with donations. A rough event budget is estimated at \$7,000. City costs may be incurred for miscellaneous expenses. Downtown represents a significant investment and provides the City with a focus and an image.

Blair King
City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Report on the Status of the General Plan Update

MEETING DATE: August 19, 2009

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Receive report on the status of the General Plan Update.

BACKGROUND INFORMATION: In February, the City Council approved the Preferred Alternative for the General Plan Update. Subsequent to this action in March the City Council approved a change order to retain Dyett & Bhatia, the City's General Plan consultants, to prepare the Housing Element as part of the comprehensive update. Since the Council action, the various consultants have been preparing the Policy document that contains the required and optional elements to the General Plan. Additionally, Dyett & Bhatia is preparing the Draft Environmental Impact Report (DEIR) that corresponds to the policies.

At this time, staff has reviewed and commented on eight of the 11 chapters. The remaining three chapters are being reviewed. This internal review has involved a variety of departments depending on the subject. For example, the Electric Utility Department has reviewed the Conservation Element, the Police and Fire Departments have reviewed the Safety Element and the Public Works Department has been heavily involved in the Growth Management and Circulation Elements. It is our goal to introduce the Draft of the Plan to the Planning Commission at its August 26 meeting. This is intended to begin a process of public review that we believe will take several sessions. Following closely behind this introduction will be the DEIR. Our expectation is that this will be completed by mid-September. The schedule shows potential City Council review beginning in November.

This program is back within budget.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

Konradt Bartlam
Community Development Director

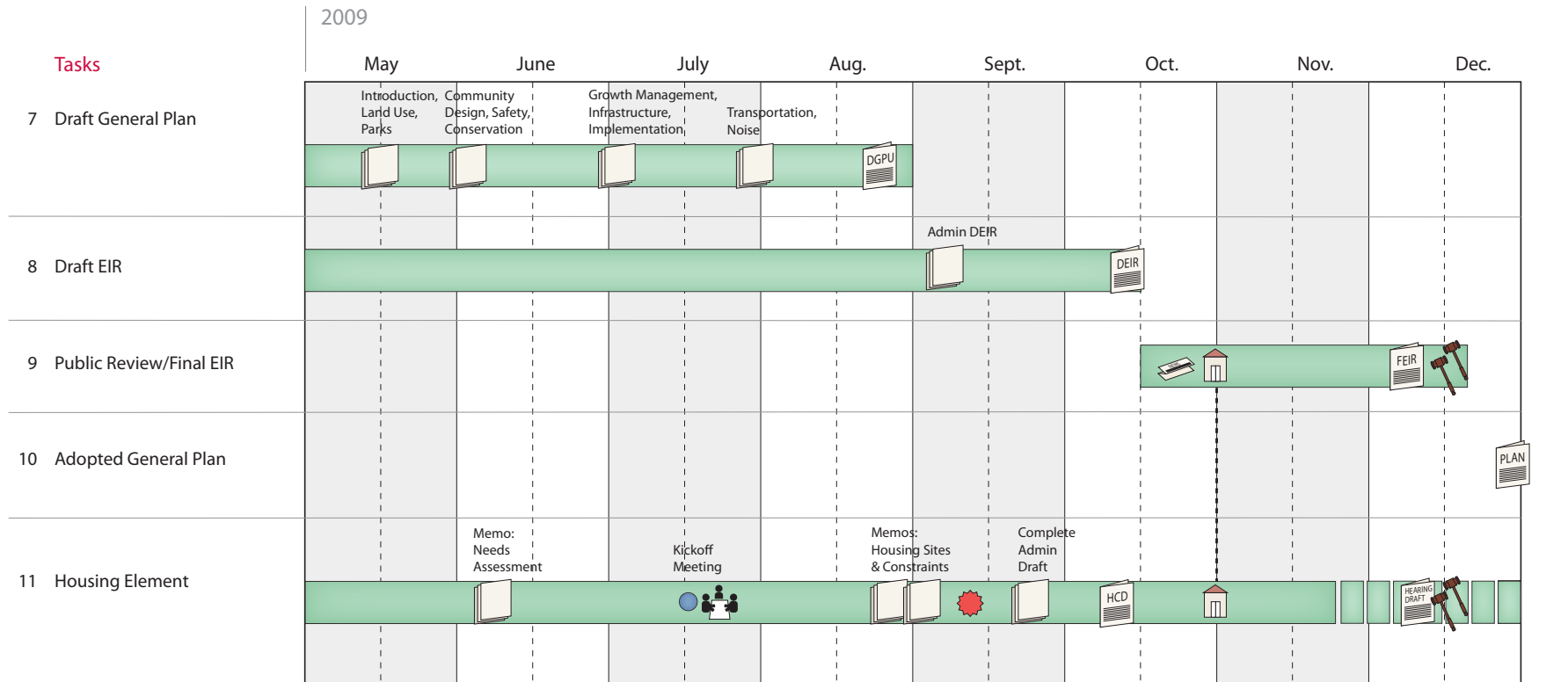
Attachment:
General Plan Update and EIR Schedule

J:\Community Development\Council Communications\2009\8-19 G.P. status.doc

APPROVED: _____
Blair King, City Manager

Schedule

City of Lodi General Plan Update and EIR



DYETT & BHATIA
Urban and Regional Planners



Consultant Effort



Interim Product



Final Product



Newsletters



Stakeholder Forum



Community Meeting/Workshops



Planning Commission/City Council Meeting



Public Hearing



Other (as noted)



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: **Approve Issuance of Request for Proposals for Turnkey Solar Demonstration Project at the White Slough Water Treatment Control Facility (EUD)**

MEETING DATE: **August 19, 2009**

PREPARED BY: **Electric Utility Director**

RECOMMENDED ACTION: Approve issuance of Request for Proposals for a turnkey Solar Demonstration Project at the White Slough Water Treatment Control Facility.

BACKGROUND INFORMATION: Significant progress has been made over the last five years toward making solar energy resources a viable electric utility scale resource technology.

Staff is proposing that the City solicit proposals for the installation, operation and maintenance of a relatively large scale solar project at its White Slough Water Treatment Control Facility. Some of the benefits of such a project include:

- Showcasing a renewable energy project at a site adjacent to and visible from Interstate 5;
- Obtaining experience with solar energy technology;
- Exploring the economics of solar energy systems available today;
- Helping to demonstrate innovative renewable energy technologies and promoting eventual product commercialization and enhanced economics; and
- Enhance Lodi's reputation as a community welcoming new green businesses.

The proposed site would be a triangular parcel owned by the City which is adjacent to I-5. This site has the potential for 100 to 300 kilowatts of installed solar capacity. The project would be "behind the meter" of the treatment plant at White Slough and the electricity generated by the project would reduce White Slough's demand on Lodi Electric Utility (LEU).

Some of the key parameters of the Request for Proposal are:

- Projects are to use solar photovoltaic technology and may be fixed or tracking and flat panel or reflecting;
- Projects would be turnkey. The Proposer is responsible for all aspects of the project including permitting, financing, installation, operation and maintenance;
- An in-service date prior to June 1, 2010 is preferred;
- Term would be 25 years with an option for the City to buy (and operate) the project any time after five years at a predetermined price or formula;
- Minimum size would be 100 KW. Maximum size would be dictated by the limits of the site;
- Purchases would be made pursuant to a negotiated Power Purchase Agreement (PPA);
- Preferred pricing approach would involve an initial year price (cents/kilowatt-hour) with an annual escalation rate, if any;

APPROVED: _____
Blair King, City Manager

- Lodi Electric Utility would be granted all environmental and capacity attributes associated with the project to include, but not be limited to, greenhouse gas credits/allowances, air quality credits/allowances, renewable energy credits, resource adequacy capacity, local resource capacity, etc;
- LEU would be responsible for relocating a power pole on the site if it interferes with a proposed project;
- The purchaser of the solar energy would be the City of Lodi's White Slough treatment facility.
- The Project would be eligible for a California Solar Initiative (CSI) Rebate from LEU as per the utility's rules and regulations regarding the CSI that are then in effect. It is expected that the rebate would be provided to the customer, not the Proposer.
- The Project would comply with all terms and conditions related to interconnection with LEU.
- Proposer will assist the City in showcasing its solar project and promoting the location of green technology businesses and jobs in Lodi. Project signage would be as mutually agreed.

In addition to considering responses to the solar RFP, LEU will also be reviewing solar photovoltaic proposals from its participation in the Northern California Power Agency Green Power Pool. The details of such solar energy purchase arrangements are still under development. Proposals will be evaluated based on which proposal is judged to provide the most benefit to the City of Lodi. Price will only be one element of the evaluation.

For a recent twelve month period, the monthly annual electric demand by the White Slough treatment facility is between 800 and 900 kilowatts (KW). The total electricity consumption during this 12-month period was about 7 million kilowatt-hours (KWH) resulting in an annual bill of about \$500,000. (A 100 KW solar project will typically contribute 200,000 KWH or less.)

Solar photovoltaic technology is one which uses silicon semiconductor material to produce electricity. Typically, two types of silicon (P type and N type) are sandwiched together in a flat plate solar panel creating a collector that is sensitive to sunlight. When light (photons) strikes a solar panel, electrons are displaced from the silicon atoms and flow if the panel is part of a closed circuit. The flowing electrons create a direct "DC" electrical current. The DC current is transformed into alternating current "AC" through use of an inverter.

Photovoltaic cells are most often mounted at an angle and face south in order to capture the maximum amount of direct sun. To increase output (at a higher installed cost), solar cells can also be placed on tracking systems that follow the sun to maximize the amount of solar energy captured. Another type of solar array is one designed to concentrate sunlight. These concentrating collectors use a lens or a glass reflecting surface to concentrate more sunlight onto the silicon cells.

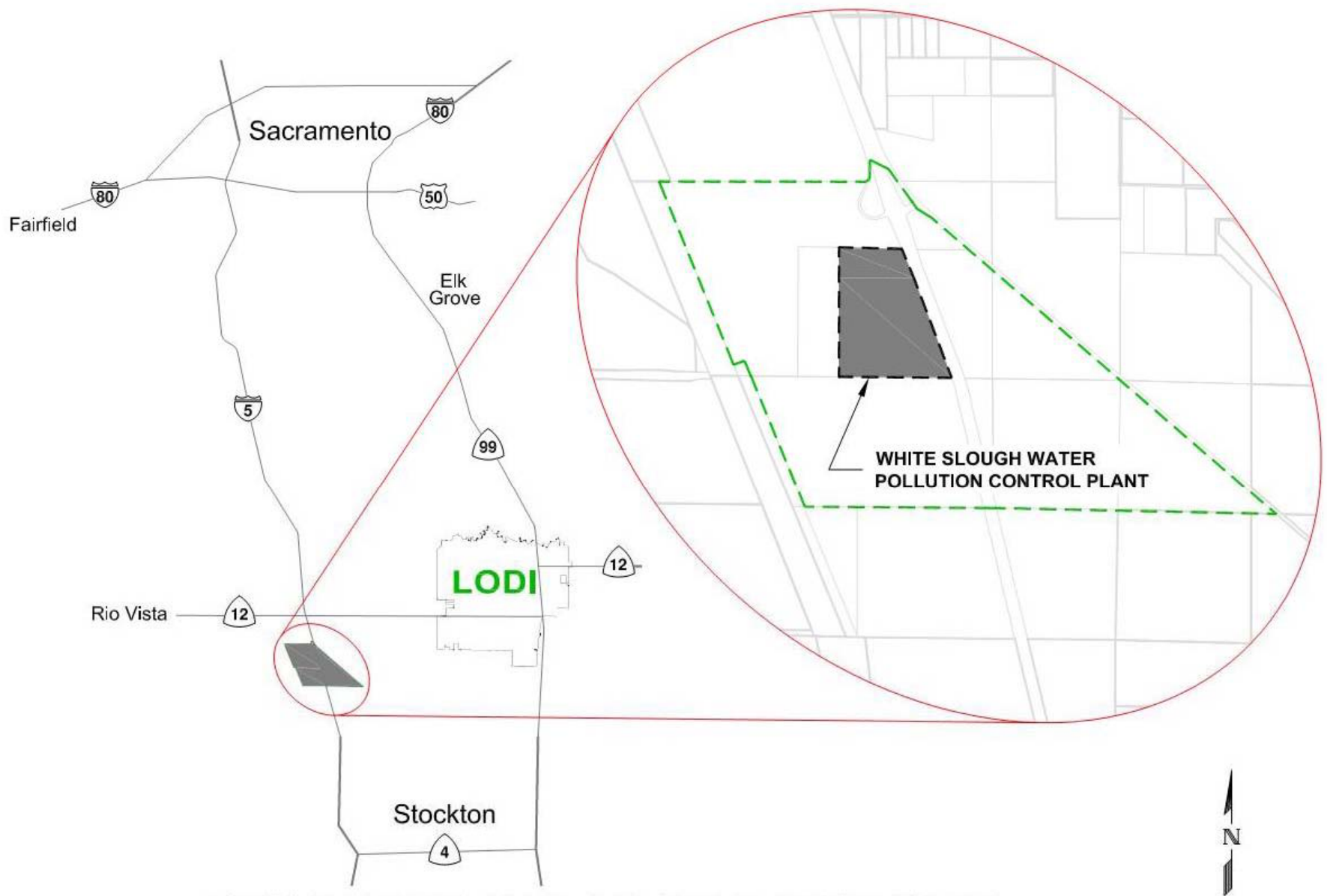
Attached are maps showing the location of the proposed project site.

FISCAL IMPACT: Electricity generated by the solar project will reduce conventional electricity purchases incurred by White Slough at little or no additional cost.

FUNDING AVAILABLE: The cost of purchasing electricity from the successful solar project will be paid from the Wastewater Utility's operating budget.

Jordan Ayers
Deputy City Manager/Internal Services Director

George F. Morrow
Electric Utility Director



PROPOSED SOLAR PROJECT SITE WHITE SLOUGH WATER POLLUTION CONTROL PLANT



PROPOSED SOLAR
PROJECT SITE

PROPOSED SOLAR 480V
CONNECTION POINT,
LOCATION #1.

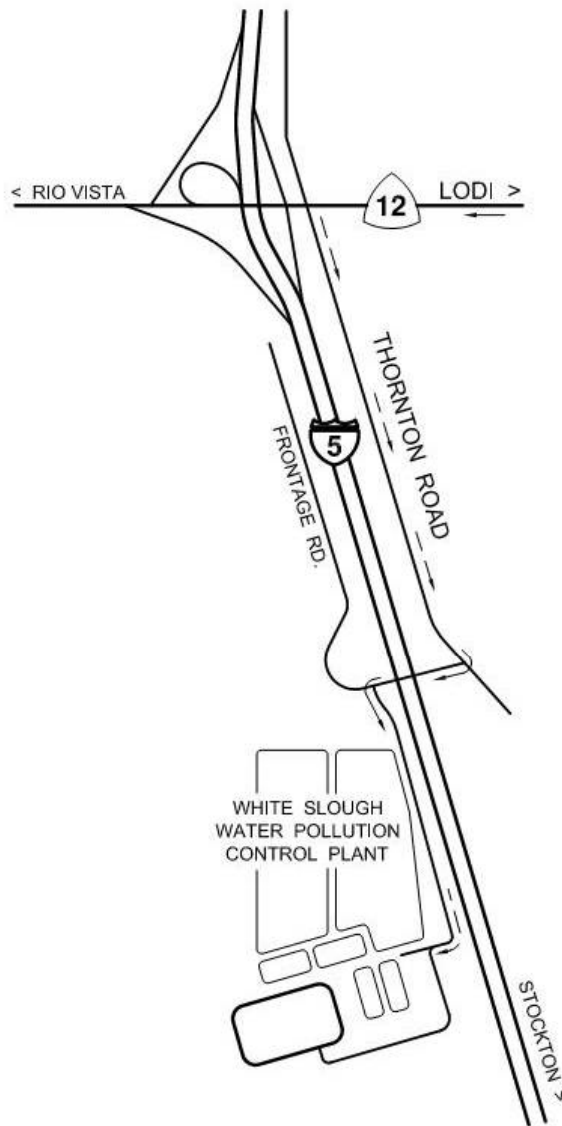
PROPOSED SOLAR 480V
CONNECTION POINT,
LOCATION #2.

WHITE SLOUGH
OFFICE



PROPOSED SOLAR PROJECT SITE

WHITE SLOUGH WATER POLLUTION CONTROL PLANT



DRIVING DIRECTIONS:

LEAVING LODI, WEST ON HIGHWAY 12 TO THORNTON ROAD.
TURN LEFT AND CONTINUE SOUTH ON THORNTON ROAD.
TURN RIGHT ON THE I-5 FRONTAGE ROAD HEADING WEST TO TRAVEL UNDERNEATH I-5.
TURN LEFT ON TO THE ACCESS ROAD.
HEAD SOUTH AND TURN RIGHT, GO THROUGH THE WHITE SLOUGH WATER POLLUTION CONTROL PLANT MAIN GATE.
PARKING IS ON THE LEFT.

PROPOSED SOLAR PROJECT SITE WHITE SLOUGH WATER POLLUTION CONTROL PLANT



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Report and Consider Options for Cable Television Broadcasts of City Council Meetings

MEETING DATE: August 19, 2009

PREPARED BY: City Manager's Office

RECOMMENDED ACTION: Receive the report and consider options for cable television broadcasts of City Council meetings.

BACKGROUND INFORMATION: Comcast recently notified the City it will no longer provide staffing or other support to broadcast City Council meetings after August 2009. Comcast's decision stems from provisions within the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which allows cable TV companies to bypass franchise agreements with local governments in favor of a one-size-fits-all State franchise. Comcast's franchise agreement with the City expired in 2008.

While DIVCA calls for cable companies to pay 5 percent of revenues to the local jurisdiction as a franchise fee, it does not require them to staff events, provide equipment, free cable services to public facilities or other non-cash support, as Comcast has in the past.

Because Comcast will no longer be an active partner in the broadcast of City Council meetings, City staff will absorb those duties to avoid a new appropriation of funds. Other options include hiring an experienced local camera operator for \$40 per hour or part-time stage technicians for roughly \$20 an hour.

Another impact of Comcast's switch to a State franchise is that the cable company will no longer provide free service to City Hall, the Carnegie Forum or Electric Utility. It is offering to provide limited free service to the police and fire stations. Although there are no funds appropriated for cable TV service in the FY 2009/10 budget, it is prudent to purchase minimal service to the Carnegie Forum. Without the service, expected to cost approximately \$200 a year, the City would need to install a closed-circuit video system within the Carnegie Forum for two purposes:

- 1) To provide video and audio of Council meetings to the overflow crowd in the foyer; and
- 2) To provide the video/audio signal for the Granicus video archiving system and live web streaming, which is currently taken from the Comcast cable signal.

Another element of DIVCA is the ability of local governments to collect an additional 1 percent of cable TV revenue to support Public, Education and Government (PEG) channels. We have not sought the additional 1 percent PEG fee from Comcast because, until now, the cable company has agreed to continue providing staffing and other non-cash support for City Council meetings.

APPROVED: _____
Blair King, City Manager

Although staff prefers the decades-old practice of cable companies providing support for public channels, we can no longer rely on Comcast to replace aging equipment. Funds needed to replace that equipment, or enhance current facilities, may be obtained by collecting the additional 1 percent for PEG programming. Otherwise, the General Fund would be used to pay for equipment repairs, maintenance or replacement.

For Lodi, an additional 1 percent would mean roughly \$80,000 in annual PEG revenue from Comcast and AT&T, the latest entry into Lodi's cable broadcast market. AT&T received a State video franchise on March 30, 2007, and the City is projecting \$425,000 in cable TV franchise revenue in the 2009/10 fiscal year. For customers, the cost would vary with the subscription. For a subscriber to Comcast's "Digital Starter" service (\$52.15 monthly), the PEG fee would add 52 cents.

Although DIVCA prohibits local agencies from using the additional revenue for operations, these funds could be used to replace outdated and failing video and audio equipment at the Carnegie Forum, install the necessary infrastructure at Hutchins Street Square so that large community meetings there could be televised and construct a local access studio, among other improvements.

Other key points of DIVCA include the right of cities to audit State franchise holders' records, the requirement that incoming State video franchise holders and incumbent systems negotiate to interconnect systems to provide PEG programming, and that State franchise holders comply with existing State and federally mandated customer service standards.

The City Council would need to adopt an ordinance before the PEG revenue could be collected and customer service standards could be enforced.

FISCAL IMPACT: Estimated \$200/year to continue cable television signal to Carnegie Forum. Using part-time stage technicians to operate video cameras will cost an additional \$2,000 per year; or \$4,000 for an experienced camera operator.

FUNDING AVAILABLE: General Fund, specific source not identified.

Jordan Ayers, Deputy City Manager

Jeff Hood
Communications Specialist

Attachments: California Public Utilities Code Sec. 5870 (PEG fee)

5870. (a) The holder of a state franchise shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access (PEG) channels, as are activated and provided by the incumbent cable operator that has simultaneously activated and provided the greatest number of PEG channels within the local entity under the terms of any franchise in effect in the local entity as of January 1, 2007. For the purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality for at least eight hours per day. The holder shall have three months from the date the local entity requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section.

(b) The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities. The PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(c) (1) If less than three PEG channels are activated and provided within the local entity as of January 1, 2007, a local entity whose jurisdiction lies within the authorized service area of the holder of a state franchise may initially request the holder to designate not more than a total of three PEG channels.

(2) The holder shall have three months from the date of the request to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the

incumbent cable operator to make adequate interconnection available, as required by this section.

(d) (1) The holder shall provide an additional PEG channel when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television.

(2) For the purposes of this section, "locally produced video programming" means programming produced or provided by any local resident, the local entity, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

(e) Any PEG channel provided pursuant to this section that is not utilized by the local entity for at least eight hours per day as measured on a quarterly basis may no longer be made available to the local entity, and may be programmed at the holder's discretion. At the time that the local entity can certify to the holder a schedule for at least eight hours of daily programming, the holder of the state franchise shall restore the channel or channels for the use of the local entity.

(f) The content to be provided over the PEG channel capacity provided pursuant to this section shall be the responsibility of the local entity or its designee receiving the benefit of that capacity, and the holder of a state franchise bears only the responsibility for the transmission of that content, subject to technological restraints.

(g) (1) The local entity shall ensure that all transmissions, content, or programming to be transmitted by a holder of a state franchise are provided or submitted in a manner or form that is compatible with the holder's network, if the local entity produces or maintains the PEG programming in that manner or form. If the local entity does not produce or maintain PEG programming in that manner or form, then the local entity may submit or provide PEG programming in a manner or form that is standard in the industry. The holder shall be responsible for any changes in the form of the transmission necessary to make it compatible with the technology or protocol utilized by the holder to deliver services. If the holder is required to change the form of the transmission, the local entity shall permit the holder to do so in a manner that is most economical to the holder.

(2) The provision of those transmissions, content, or programming to the holder of a state franchise shall constitute authorization for the holder to carry those transmissions, content, or programming. The holder may carry the transmission, content, or programming outside of the local entity's jurisdiction if the holder agrees to pay the local entity or its designee any incremental licensing costs incurred by the local entity or its designee associated with that transmission. Local entities shall be prohibited from entering into licensing agreements that impose higher

proportional costs for transmission to subscribers outside the local entity's jurisdiction.

(3) The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

(h) Where technically feasible, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a state franchise and incumbent cable operators shall provide interconnection of the PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a holder of a state franchise and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the local entity may require the incumbent cable operator to allow the holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically feasible point for interconnection is available, the holder of a state franchise shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the holder requesting the interconnection unless otherwise agreed to by the parties.

(i) A holder of a state franchise shall not be required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name, or other identifying marks of another cable operator or video service provider. For purposes of this section, PEG content is not branded if it includes only production credits or other similar information displayed at the conclusion of a program. The local entity may require a cable operator or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available through interconnection to another provider of PEG capacity.

(j) In addition to any provision for the PEG channels required under subdivisions (a) to (i), inclusive, the holder shall reserve, designate, and, upon request, activate a channel for carriage of state public affairs programming administered by the state.

(k) All obligations to provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings contained in a locally issued franchise existing on December 31, 2006, shall continue until the local franchise expires, until the term of the franchise would have expired if it had not been terminated pursuant to subdivision (o) of Section 5840, or until January 1, 2009, whichever is later.

(l) After January 1, 2007, and until the expiration of the incumbent cable operator's franchise, if the incumbent cable operator has existing unsatisfied obligations under the franchise to remit to the local entity any cash payments for the ongoing costs of public, educational, and government access channel facilities or institutional networks, the local entity shall divide those cash payments among all cable or video providers as provided in this section. The fee shall be the holder's pro rata per subscriber share of the cash payment required to be paid by the incumbent cable operator to the local entity for the costs of PEG channel facilities. All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities and institutional networks, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

(m) In determining the fee on a pro rata per subscriber basis, all cable and video service providers shall report, for the period in question, to the local entity the total number of subscribers served within the local entity's jurisdiction, which shall be treated as confidential by the local entity and shall be used only to derive the per subscriber fee required by this section. The local entity shall then determine the payment due from each provider based on a per subscriber basis for the period by multiplying the unsatisfied cash payments for the ongoing capital costs of PEG channel facilities by a ratio of the reported subscribers of each provider to the total subscribers within the local entity as of the end of the period. The local entity shall notify the respective providers, in writing, of the resulting pro rata amount. After the notice, any fees required by this section shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for the preceding calendar quarter, and may only be used by the local entity as authorized under federal law.

(n) A local entity may, by ordinance, establish a fee to support PEG channel facilities consistent with federal law that would become effective subsequent to the expiration of any fee imposed pursuant to paragraph (2) of subdivision (l). If no such fee exists, the local entity may establish the fee at any time. The fee shall not exceed 1 percent of the holder's gross revenues, as defined in Section 5860. Notwithstanding this limitation, if, on December 31, 2006, a local entity is imposing a separate fee to support PEG channel facilities that is in excess of 1 percent, that entity may, by ordinance, establish a fee no greater than that separate fee, and in no event greater than 3 percent, to support PEG activities. The ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise.

(o) The holder of a state franchise may recover the amount of any fee remitted to a local entity under this section by billing a recovery fee as a separate line item on the regular bill of each subscriber.

(p) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no provider may

by barred from the provision of service or be required to terminate service as a result of that dispute or enforcement action.